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URBAN/MUNICIPAL



Report OF THE

Task Force to Review the Mandate and Structure

OF THE

Hamilton Harbour Commissioners

January 1989

URBAN MUNI AL
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GOVERNMENT DOCUMENTS



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**MEMBERS AND STAFF OF THE TASK
FORCE TO REVIEW THE MANDATE AND
STRUCTURE OF THE HAMILTON
HARBOUR COMMISSIONERS**

MEMBERS AND STAFF OF THE TASK FORCE
TO REVIEW THE MANDATE AND STRUCTURE
OF THE HAMILTON HARBOUR COMMISSIONERS

Alderman Brian Hinkley
Chairman

MEMBERS

Mr. Russ Powers, Vice-Chairman
(representing the Hamilton Region Conservation Authority)

Alderman Geraldine Copps
(representing the Regional Municipality of Hamilton-Wentworth)

Alderman Walter Mulkewich
(representing the City of Burlington)

Mr. Duncan Beattie
(City's Appointee to the Hamilton Harbour Commissioners)

Mr. John A. Macnamara
(representing Dofasco)

Mrs. Gil Simmons
(representing the North End Information Service)

Mr. Brian W. Warry
(representing Stelco Steel)

Mr. John Worsell
(representing the Hamilton Yacht Club)

Mr. Jim Macdonald
(representing the Conserver Society of Hamilton and District
Inc.)

Mr. Ray Stewart
(representing the Ministry of the Environment)

Mr. John Nolan
(representing the Central Area Plan Implementation Committee)

Mr. Don Girt
(representing the Macassa Bay Yacht Club)

STAFF

Mr. Brian Loreto
City Solicitor's Office

Mrs. Caroline Floroff
Planning Department

Mr. Alex Georgieff
Planning Department

Mrs. Susan K. Reeder, Task Force Secretary
City Clerk's Department

The first of the two parts of the book is devoted to a general survey of the history of the theory of the structure of the atom. It is a history of the ideas which have been advanced from the time of Democritus to the present day.

The second part of the book is devoted to a detailed study of the modern theory of the structure of the atom. It is a study of the ideas which have been advanced since the time of Rutherford and Bohr to the present day.

The book is written for the student of physics and for the physicist who is interested in the history of the theory of the structure of the atom. It is a book which should be read by all who are interested in the history of the theory of the structure of the atom.

F O R E W O R D

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F O R E W O R D

"The PORT OF HAMILTON is an international shipping centre on the St. Lawrence Seaway System. The port and the industries which it serves have contributed to the economic vitality and growth of Canada.

Marine transportation has and will continue to play a major role in the movement of economically important products and commodities and the Port of Hamilton looks forward to the challenges that this dynamic industry will bring in the future.

The port will meet these challenges by adapting and managing the port as a national resource that facilitates service and opportunity to those segments of the community that must rely on having an efficient transportation system to ensure the delivery and supply of vital materials and goods."

HAMILTON HARBOUR COMMISSIONERS
75TH ANNUAL REPORT - 1987

"THE 'Image' of a City has very important economic overtones. Investors do not want to locate their companies in a City that does not provide a good life style - a place to live and enjoy as well as work. Our politicians have wisely recognized this and provided such amenities as Hamilton Place, The Art Gallery, etc. Let us not overlook the enormous potential benefits of these harbour lands for the citizens of this area. Keep in mind that virtually every other city that has had the opportunity of reclaiming its waterfront has done so. The list of cities which have created "people places" on their harbours include virtually every city in North America which has a waterfront. Vancouver, Seattle, San Francisco, San Diego, Halifax, Boston, Baltimore, New York, to name a few. Closer to home, the list includes Chicago, Toronto, Detroit, Thunder Bay, Kingston, Montreal and many others. I am sure that cities such as London, Ontario or Winnipeg or Regina or Calgary or Edmonton would welcome such an opportunity. Any city can build a convention centre or a coliseum. Only a lucky few cities can develop a recreational facility on an ocean-going port for the use of its citizens....."

"The west harbour must be an integral part of the Region's recreational facilities. The Waterfront developments throughout the world draw its citizens to their waterfront by the hundreds of thousands annually for any number of activities. The sheer pleasure of being on the water or enjoying the ambience of a great sea port or watching the ships come and go is right in our midst, but is being denied to our residents. Hamilton's waterfront, developed properly, could serve the same function.

It could become the star attraction of our already excellent parks and recreation facilities. It would compliment, not detract from the existing parks and add a dimension which the present parks do not have. For example, restaurants and pubs overlooking the waterfront - sightseeing boats on the harbour - outlets for renting canoes, or rowboats thus allowing the average citizen who cannot afford a yacht to get out on the water."

JOHN NOLAN - TASK FORCE MEMBER

I N T R O D U C T I O N

A N D

B A C K G R O U N D

INTRODUCTION AND BACKGROUND

Hamilton Harbour, Burlington Bay, Lake Geneva, or the Port of Hamilton is a body of water at the heart of Hamilton's economic success.

The harbour is also a testimony to environmental disaster and failure.

The domination of industry and port development over public access and recreation is directly attributable to political decisions setting the course and direction over one of Hamilton's most precious assets.

Hamilton Harbour is a reflection of the City's history and a beacon of hope for the City's future.

The Task Force, during its deliberations, identified some issues that were not expected. These matters are addressed in the report. It also dealt with issues that precluded recommendations that would result in immediate resolution. The reader will note that some recommendations will set in place a process to assist in the cultivation of co-operation and communication.

The Task Force also identified issues that have been discussed by various City Councils for more than 20 years.

It is noteworthy that, over the years, many of the issues and concerns are discussed time and again. The membership of City Council and the Harbour Commissioners may change, but the outstanding issues remain the same.

The reader will note the recommendations contain no reference to changing the mandate of the Harbour Commissioners.

It is the opinion of the Task Force that the existing mandate has resulted in the City of Hamilton building one of the finest ports and industrial centres to be found anywhere in North America. We are sure this was the intent of the City of Hamilton in 1911 when they initiated the establishment of the Harbour Commissioners. Unfortunately the drafters of the legislation could not foresee a changing society with changing priorities.

Our examination did not conclude that it was necessary nor desirable to recommend a change in the mandate of the Harbour Commissioners.

The work of the Task Force clearly demonstrated a long history of disagreement, lack of co-operation, court battles, misunderstanding, frustration and needless acrimony.

It would be easy and simplistic to say that much of the conflict arises due to the personalities involved. However, this assumption and conclusion would not be totally accurate. The Task Force rejects this notion as not being the root cause for this conflict.

The 1912 Federal legislation that created the Harbour Commissioners has been the subject of greater question and differences in interpretation in recent years.

The period from 1912 to the late 50's or early 60's produced little controversy or disagreements. The Harbour Commissioners went about their work with very few questions or scrutiny by City Council.

It was not until environmental concerns and diminishing public access to the harbour front were recognized, that environmental groups, citizens and City Council became concerned.

For 50 years the Harbour Commissioners, having limited contact with City Council, operated and developed the harbour. The Commissioners conducted their affairs on behalf of the City devoid of any meaningful interaction with City Council and Council's objectives or plans for the harbour. It is not surprising that the Harbour Commissioners began to believe they are a power unto themselves once they are appointed.

The Task Force believes this lack of contact, questioning and monitoring by City Council for over 50 years was not the intent of the legislation when drafted. The Task Force believes exactly the opposite was intended.

The Act outlines the Harbour Commissioners' reporting procedures and obligations respecting financial matters, by-laws and the development of the harbour on behalf of the City. The Act clearly outlines mandatory contact with City Council. The Task Force believes that the City Council from 1912 to the 1960's did not fully exercise its authority and the provisions in the Act for monitoring the affairs of the Harbour Commissioners. It was as though someone said "Everything is fine down at the harbour so just let the Commissioners do their own thing".

For 50 years a method of operating the harbour with limited reporting and communications took hold and became the norm. It was as if City Council were playing the role of a Rip Van Winkle. After 50 years of sleep the Council finally woke up when citizens became concerned about their disappearing harbour. The City Council then decided to use the written rules in the Act, as interpreted by the City, but not as were being practiced by both parties.

It is clear to the Task Force that greater contact and communication between the Harbour Commissioners and City Council are a prerequisite for co-operation. A change in composition, not a change in mandate, is recommended.

It is not sufficient to rely on understanding and goodwill. The two major parties who have control over the harbour must be mandated to work more closely together. Without this change there is no guarantee of co-operation. History is a clear reminder that "goodwill" is only as "good" as the "will".

The non-participation of the Harbour Commissioners on City and community committees that deal with harbour matters is a substantial barrier to communication and co-operation.

The infrequent contact between the Harbour Commissioners and City Council and the community must be changed to regular and continuous communication, to avoid misunderstandings that lead to conflict.

The recommendations contained within this report are designed to have the Harbour Commissioners and City Council work more closely together. This report will also serve as a reference for future consideration on harbour matters.

It is expected that this report will foster a new spirit of communication and co-operation that will lead to the harbour being developed as both an industrial port and a recreational resource for the future benefits of all the people.

TERMS OF REFERENCE

TERMS OF REFERENCE
THE TASK FORCE TO REVIEW THE
MANDATE AND STRUCTURE OF
THE HAMILTON HARBOUR COMMISSIONERS

- (a) That City Council establish a single-purpose community task force to review the mandate and structure of the Hamilton Harbour Commissioners, and the Hamilton Harbour Commissioners' Act.
- (b) That the purpose of the review is to determine if the present mandate, structure and legislation in which the Hamilton Harbour Commissioners and other jurisdictions operates is best suited to meet the community needs and directions for the future development and control over the operations of Hamilton Harbour.
- (c) That the Chief Administrative Officer, in conjunction with the necessary City officials, ensure that the required support staff is provided for the Task Force.
- (d) That the Task Force will report to the Planning and Development Committee on a regular basis.
- (e) That the Task Force shall determine their own method of proceeding and shall determine their own Chairman and structure.
- (f) That the following organizations be requested to submit the name of one representative to sit on the Task Force:
 - The City of Hamilton
 - The Hamilton Harbour Commissioners
 - The City of Burlington
 - The Region of Hamilton-Wentworth
 - The Hamilton Region Conservation Authority
 - The Royal Botanical Gardens
 - The Conserver Society of Hamilton and District Inc.
 - Stelco Steel
 - Dofasco
 - The Provincial Ministry of the Environment (Hamilton Branch)
 - Stakeholders Group "Dialogue on Hamilton Harbour"
 - Royal Hamilton Yacht Club
 - Leander Yacht Club
 - Macassa Bay Yacht Club
 - North End Information Service

- (g) That Alderman B. Hinkley be appointed to represent the City of Hamilton on this Task Force.
- (h) That the Hamilton Harbour Commissioners be requested to prepare and make a presentation to the Wednesday, 1988 June 22nd meeting of the Task Force to Review the Mandate and Structure of the Hamilton Harbour Commissioners with respect to the Hamilton Harbour Commissioners' Future Plans for Shipping and Navigation.
- (i)
 1. That the City of Hamilton's Appointee to the Hamilton Harbour Commissioners be requested to sit on the Task Force to Review the Mandate and Structure of the Hamilton Harbour Commissioners.
 2. That the Minister of Transport Canada be requested to appoint a representative to sit on the Task Force to Review the Mandate and Structure of the Hamilton Harbour Commissioners; either as a full-voting member or as an observer.
 3. That the Central Area Plan Implementation Committee be requested to appoint a representative to sit on the Task Force to Review the Mandate and Structure of the Hamilton Harbour Commissioners.

Section 7 of the SIXTH Report for 1988 of the Planning and Development Committee, adopted by City Council on 1988 March 29th, and further amended by City Council on 1988 May 31st and 1988 September 27th.

THE WORK OF THE TASK FORCE

THE WORK OF THE TASK FORCE

The Planning and Development Committee at its meeting held Wednesday, March 9, 1988 received a report from Alderman Brian Hinkley dated March 2, 1988 respecting a Community Task Force to Review the Mandate and Structure of the Hamilton Harbour Commissioners.

Following discussion on this matter the Committee endorsed the proposed establishment of a Community Task Force and forwarded this matter onto City Council for final approval.

City Council at its meeting held Tuesday, March 29, 1988 approved the establishment of a single purpose Community Task Force to Review the Mandate and Structure of the Hamilton Harbour Commissioners, and the Hamilton Harbour Commissioners' Act. A copy of those Terms of Reference, including amendments, can be found in the Terms of Reference Section of this report.

The following organizations were invited to send a representative to sit on the Task Force and each group appointed a representative to serve:

- The City of Hamilton
- The City of Burlington
- The Regional Municipality of Hamilton-Wentworth
- Hamilton Region Conservation Authority
- Conserver Society of Hamilton and District Inc.
- Stelco Steel
- Dofasco
- Ministry of the Environment
- Hamilton Yacht Club
- Macassa Bay Yacht Club
- North End Information Service
- City's Appointee to the Harbour Commissioners
- Central Area Plan Implementation Committee

Other organizations were invited to serve on the Task Force, but for varying reasons declined. These organizations involve the following:

- Hamilton Harbour Commissioners
- Leander Yacht Club
- Royal Botanical Gardens
- Stakeholders Group
- Transport Canada (no response received)

A copy of the letters from the organizations who declined participation on the Task Force are attached in the Appendix section of this report.

A number of presentations were made to the Task Force from various agencies, and a list of those presentations can be found in Table One, attached hereto.

The Task Force also perused an enormous number of documents in their review process and a listing of those documents can be found in the appendix section of this report.

The Task Force divided into four sub-committees for the purpose of analyzing those sections pin-pointed as key areas for the review.

The break-down of sub-committees and the areas reviewed is as follows:

LEGAL

Areas reviewed

- (a) Definition of "Navigation and Shipping"
- (b) Definition of "Waterfront"
- (c) Definition of "Harbour Headline"
- (d) Jurisdiction - clearly defined? overlapping?
- (e) Legal problems needing Legal and/or Legislative Solutions

Members

Russ Powers, Chairman
John Macnamara
Duncan Beattie
Brian Loreto, City Solicitor's Office

PLANNING

Areas reviewed

- (a) Master Plan for the Harbour - Agreement by all parties - potential
- (b) Historical Preservation
- (c) Planning as it pertains to the Harbour
- (d) Public access

Members

Gil Simmons, Chairman
Brian Warry
John Worsell
Caroline Floroff, Planning Department

ENVIRONMENT

Areas reviewed

- (a) Sediment on Harbour bed

Alderman Walter Mulkewich, Chairman
Jim Macdonald
Ray Stewart
Alex Georgieff, Planning Department

POLITICAL

Areas reviewed

- (a) Thickness of Ice
(b) Licences and Permits for boaters
(c) Harbour Policing
(d) By-law (s) - City Clerk notified
(e) City monitoring affairs of Harbour
(f) Harbour Commissioners - who are they accountable to?
(g) Who sets priorities for Harbour
(h) Need to improve communication and co-operation
(i) Composition and Responsibilities of Harbour Commissioners
(j) Actions by City

Members

Alderman Brian Hinkley, Chairman
Alderman Geraldine Copps
John Nolan
Don Girt

The Task Force received the recommendations of each sub-committee and following a considerable amount of discussion, fine tuning and editing, formulated the recommendations contained herewith.

Copies of the minutes of the meetings of the Task Force are available from the Secretary upon request.

NOTE: The Task Force members were invited to attend the following presentations:

- (a) Parks and Recreation Committee -
Tuesday, June 7th, 1988, 10:00 a.m.,
re: Waterfront Project.
- (b) Special Meeting of members of City Council -
Thursday, August 25th, 1988, 12:00 noon,
re: Presentation by the Hamilton Harbour
Commissioners.

TABLE ONE

LIST OF PRESENTATIONS MADE

TO THE TASK FORCE

TO REVIEW THE MANDATE AND STRUCTURE

OF THE HAMILTON HARBOUR COMMISSIONERS

- | | |
|---------------|--|
| May 25, 1988 | - Mr. A. Georgieff, Mrs. C. Floroff,
Planning Department -
re: Harbour Master Plan. |
| June 8, 1988 | - Inspector R. Cruse, Officer Michael
Mullaley, Hamilton-Wentworth Regional
Police -
re: Harbour Policing and Rescue. |
| June 8, 1988 | - Mr. R. Stewart, Ministry of the
Environment -
re: Water Quality. |
| June 8, 1988 | - Mr. L. Simser,
Royal Botanical Gardens -
re: Wildlife and Biology. |
| June 22, 1988 | - Mr. B. Vanderbrug,
Hamilton Regional Conservation
Authority -
re: Fill regulations. |
| June 22, 1988 | - Mr. K. Rouff, City Solicitor -
re: (a) Review of the Harbour
Commissioners' Act.
(b) Review of Court Decisions. |
| June 22, 1988 | - Mrs. D. Dent, Chairman, LACAC and
Mrs. N. Chapple, Architectural
Historian, Planning Department -
re: Heritage Preservation. |
| July 6, 1988 | - Mr. B. Loreto,
City Solicitor's Office -
re: (a) Toronto Harbour
Commissioners' Act.
(b) Harbours Commissions Act.
(c) Public Harbours and Port
Facilities Act.
(The Government Harbours and
Piers Act.) |

SUMMARY OF RECOMMENDATIONS

SUMMARY OF RECOMMENDATIONS

- 1.1 That environmental impact be a part of the planning process of any new project or development in the harbour.
- 1.2 That all works undertaken by the Harbour Commissioners meet the requirements of, and be subject to, the Provincial Ministry of the Environment and Environment Canada standards.
- 1.3 That, once a determination has been made on the question of sediments on the harbour floor, a decision be made as to who is responsible for any action and who pays.
- 1.4 That acknowledgement be given to the work of investigating the environmental concerns with respect to the harbour now being undertaken and examined by the Remedial Action Plan process.
- 1.5 That the Hamilton Harbour Commissioners be a part of any overall Co-ordinating Steering Committee established for the implementation process respecting the Remedial Action Plan.
- 2.1 That without prejudice to other matters under way, the City of Hamilton and the Hamilton Harbour Commissioners establish clearly and with all despatch the West Harbour as an area for public waterfront and open space use.
- 2.2 That Hamilton City Council initiate meetings with Burlington City Council on harbour related matters.
- 2.3 Due to the difficulty of determining a general interpretation of the term "navigation and shipping", that the City of Hamilton and the Hamilton Harbour Commissioners meet in order to agree on a clarification of the term "navigation and shipping" for their own purposes.
(See Recommendation 3.1)
- 3.1 (a) That a general interpretation of the phrase "navigation and shipping" not be accepted, but that each interpretation of this phrase rest with the circumstances surrounding the particular case or situation at hand; and

- (b) That, notwithstanding Section (a) above, that the City Hamilton and the Hamilton Harbour Commissioners meet in order to agree on a clarification of the term "navigation and shipping" as recommended in the Report of this Task Force's Planning Subcommittee, and outlined in Recommendation 2.3

3.2 (a) That the definition of the term "waterfront property" set out in the judgment of Mr. Justice Griffiths, as affirmed by the Ontario Court of Appeal, in Hamilton Harbour Commissioners v. The Corporation of The City of Hamilton et al be accepted as the legal definition of the term "waterfront property" for the purposes of The Hamilton Harbour Commissioners' Act.

- (b) That, therefore, the term "waterfront property" be defined to mean:

"That real property abutting or fronting on the body of water that constitutes Hamilton harbour".

3.3 (a) That the principles set out in the judgment of Mr. Justice Griffiths, as affirmed and augmented by the Ontario Court of Appeal in Hamilton Harbour Commissioners v The Corporation of the City of Hamilton et al be accepted as the law applicable to the issue of jurisdiction in Hamilton harbour.

- (b) That, accordingly it be recognized that,

- (i) the City may validly pass a zoning by-law affecting land use within the harbour so long as the by-law does not explicitly attempt to prohibit or regulate the use of land for purposes related to shipping and navigation or the use of land owned by the Federal Crown;
- (ii) the Commissioners may validly pass by-laws to regulate the use and development of land within the harbour for purposes related to shipping and navigation; and
- (iii) if a direct conflict arises between a validly-enacted City zoning by-law and a validly-enacted Commissioners by-law with respect to the use of a parcel of land within the harbour, the operation of the City zoning by-law is suspended during the operation of the Commissioners by-law".

- 3.4 (a) That the definition of the term "harbour headline" set out in the judgment of Mr. Justice Griffiths, as affirmed by the Ontario Court of Appeal, in Hamilton Harbour Commissioners v. The Corporation of the City of Hamilton et al be accepted as the proper legal definition of the term "harbour headline" for the purposes of the management and operation of navigation and shipping in Hamilton harbour.
- (b) That, therefore, the term "harbour headline" be defined as "a line established out from the shoreline beyond which breakwaters, wharfs, piers and other structures may not be built".
- (c) That any by-law passed by the Hamilton Harbour Commissioners to establish or amend the "harbour headline" for Hamilton harbour comply, like any other of their by-laws, with subsection 20(2) of The Hamilton Harbour Commissioners' Act, which reads:

No by-law shall have force or effect until confirmed by the Governor in Council and published in The Canada Gazette, and every such by-law shall, at least ten days before it is submitted to the Governor in Council, be served upon the City Clerk of Hamilton.

- 4.1 That City Council request the Hamilton-Wentworth Regional Police Commission to direct the Marine Unit of the Regional Police Department to be responsible for the testing, posting of warnings, and public announcements respecting the ice conditions in Hamilton Harbour and Cootes Paradise.
- 4.2 (a) That City Council petition the Federal and Provincial Government to study the matter of boating safety and the operators' knowledge and ability to perform safely in and through Ontario's waterways by instituting a system of testing and licencing operators of vessels over 10 H.P.
- (b) That the Federation of Canadian Municipalities and the Association of Municipalities of Ontario be notified of this petitioning.

- 4.3 (a) That adherence to Section 20, Sub-section 2 of the Hamilton Harbour Commissioners' Act which reads:

"No By-law shall have force or effect until confirmed by the Governor in Council and published in The Canada Gazette, and every such by-law shall, at least ten days before it is submitted to the Governor in Council, be served upon the City Clerk of Hamilton"

be carried out as intended.

- (b) That the City Clerk advise City Council when By-laws are received and that such By-laws be referred to the appropriate committee of City Council for their information and discussion.
- (c) That the 10 day notification period be monitored by the City Clerk to determine its appropriateness.

- 4.4 That City Council petition the Federal Government to amend the Hamilton Harbour Commissioners' Act as follows:

- (a) increase the membership from 3 to 5 members;
- (b) that 3 members be appointed by the Federal Government, and 2 members by the Hamilton City Council.
- (c) that Sub-section 4 of Section 6 of the Act, which reads:

"No member of the Council shall be eligigble to be a commissioner"

be repealed.

- (d) that the two members appointed by Hamilton City Council, referred to in Recommendation (b) above, consist of at least one person who is not a member of Hamilton City Council.

- 4.5 That the Annual Financial Statements of the Hamilton Harbour Commisoners be referred to the appropriate Standing Committees of Council for examination and discussion.

ENVIRONMENTAL

- 1.1 ENVIRONMENTAL IMPACT
- 1.2 ENVIRONMENTAL REQUIREMENTS
- 1.3 RESPONSIBILITY OF HARBOUR SEDIMENT
- 1.4 REMEDIAL ACTION PLAN ANALYSIS
- 1.5 REMEDIAL ACTION PLAN CO-ORDINATING
STEERING COMMITTEE

RECOMMENDATION

1.1

ENVIRONMENTAL IMPACT

THAT ENVIRONMENTAL IMPACT BE A PART OF THE PLANNING PROCESS OF ANY NEW PROJECT OR DEVELOPMENT IN THE HARBOUR.

BACKGROUND: The Environment is a major issue which everyone involved with the harbour should be concerned with. Any impact on the Environment of the harbour should be a significant concern in all works affecting the harbour.

RECOMMENDATION

1.2 ENVIRONMENTAL REQUIREMENTS

THAT ALL WORKS UNDERTAKEN BY THE HARBOUR COMMISSIONERS MEET THE REQUIREMENTS OF, AND BE SUBJECT TO, THE PROVINCIAL MINISTRY OF THE ENVIRONMENT AND ENVIRONMENT CANADA STANDARDS.

BACKGROUND: There is considerable question regarding the port development projects of the Harbour Commissioners. It is recommended that compliance with all environmental regulations (i.e. Ontario Environmental Assessment Act) is required to protect the integrity of the harbour's environment.

RECOMMENDATION

1.3 RESPONSIBILITY OF HARBOUR SEDIMENT

THAT ONCE A DETERMINATION HAS BEEN MADE ON THE QUESTION OF SEDIMENTS ON THE HARBOUR FLOOR, A DECISION BE MADE AS TO WHO IS RESPONSIBLE FOR ANY ACTION AND WHO PAYS.

BACKGROUND: The question of sediments on the harbour floor needs to await a technical verdict as to what needs to be done, if anything. We do not yet have technical consensus. Hopefully, that determination can be made as part of the Remedial Action Plan (RAP) process.

RECOMMENDATION

1.4 REMEDIAL ACTION PLAN ANALYSIS

THAT ACKNOWLEDGEMENT BE GIVEN TO THE WORK OF INVESTIGATING THE ENVIRONMENTAL CONCERNS WITH RESPECT TO THE HARBOUR NOW BEING UNDERTAKEN AND EXAMINED BY THE REMEDIAL ACTION PLAN PROCESS.

BACKGROUND: Environmental concerns are being thoroughly examined in the Remedial Action Plan process and therefore do not have to be repeated by another process. This RAP process has involved a large number of stakeholders who, indeed, established the goals for the process.

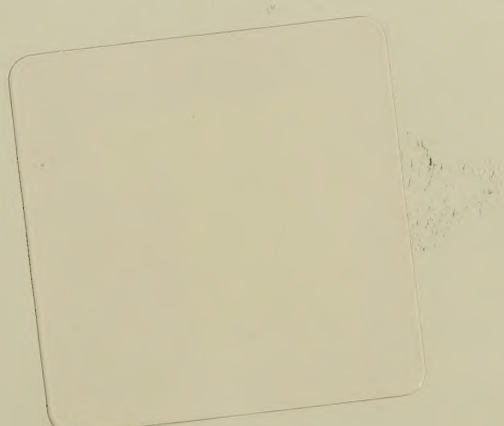
The stakeholders will be responding to the draft final report this Fall. It should be noted that stakeholder concerns have gone beyond water quality to include items such as aesthetics and access.

RECOMMENDATION

1.5 REMEDIAL ACTION PLAN CO-ORDINATING STEERING COMMITTEE

THAT THE HAMILTON HARBOUR COMMISSIONERS BE A PART OF ANY OVERALL CO-ORDINATING STEERING COMMITTEE ESTABLISHED FOR THE IMPLEMENTATION PROCESS RESPECTING THE REMEDIAL ACTION PLAN.

BACKGROUND: An item of concern to the stakeholders has been the implementation of any Remedial Action Plan. The stakeholders are considering a proposal to establish an overall Co-ordinating Steering Committee to oversee implementation. Such a Steering Committee would bring together various interests in the harbour and ensure that the questions of who is responsible and who pays are answered and that the Remedial Action Plan is monitored.



PLANNING

2.1 West Harbour - Public Waterfront and Open Space Use

2.2 Burlington participation

2.3 "Navigation and Shipping" Definition

RECOMMENDATION

2.1 WEST HARBOUR - PUBLIC WATERFRONT AND OPEN SPACE USE

THAT WITHOUT PREJUDICE TO OTHER MATTERS UNDER WAY, THE CITY OF HAMILTON AND THE HAMILTON HARBOUR COMMISSIONERS ESTABLISH CLEARLY AND WITH ALL DESPATCH THE WEST HARBOUR AS AN AREA FOR PUBLIC WATERFRONT AND OPEN SPACE USE.

BACKGROUND: In 1974, the Hamilton and Halton Conservation Authorities' joint study of the waterfront between Oakville and Grimsby identified the west end of the harbour as important for wildlife and for public recreation. Later, the City through its acquisition and detailed planning of the Lax property, affirmed its intention for the West Harbour for waterfront recreation and open space. The understood intentions of the Harbour Commissioners for the West Harbour, as outlined in the Port Master Plan of 1978, are for waterfront recreation and public access uses. Verbally, at the joint meeting of the 1988 August 25 meeting with City Council and Harbour Task Force members, the Hamilton Harbour Commissioners informed the City Council that they had no plans for Piers 1, 2, and 3 in the south-west corner of the harbour.

RECOMMENDATION

2.2

BURLINGTON PARTICIPATION

THAT HAMILTON CITY COUNCIL INITIATE MEETINGS WITH BURLINGTON CITY COUNCIL ON HARBOUR RELATED MATTERS.

BACKGROUND: The City of Burlington stands on almost one-third of the harbour shoreline, its territory seeming to end at the water's edge.

The Hamilton Harbour Commissioners has as one of its three members a commissioner who, while not formally representing the City of Burlington, nevertheless resides and carries on business there. There is at present no formal consultative arrangement between the City of Hamilton and its neighbour municipality with regard to the harbour.

The 1974 Halton/Wentworth Waterfront Study urged recognition of Halton as "an equal partner in harbour decisions", and that a Joint Committee on Landfill and Water Quality be set up, comprised of representatives of the Regional Municipalities of Halton and Wentworth.

RECOMMENDATION

2.3 "NAVIGATION AND SHIPPING" DEFINITION

DUE TO THE DIFFICULTY OF DETERMINING A GENERAL INTERPRETATION OF THE TERM "NAVIGATION AND SHIPPING", THAT THE CITY OF HAMILTON AND THE HAMILTON HARBOUR COMMISSIONERS MEET IN ORDER TO AGREE ON A CLARIFICATION OF THE TERM "NAVIGATION AND SHIPPING" FOR THEIR OWN PURPOSES. (SEE RECOMMENDATION 3.1)

BACKGROUND: The City and the Commissioners appear to have compatible visions for the harbour at the Official Plan and Master Plan levels. It is in the more specific area of zoning that difficulties lie. Recent case law has reaffirmed that dual jurisdictions operate in the harbour and that each jurisdiction is determined by use: the Commissioners' by Navigation and Shipping, and the City's by all other uses. This is relevant to the West Harbour, where it would be desirable to invite the Commissioners to deem Piers 1, 2, and 3 surplus to the needs of Navigation and Shipping. It is also relevant to the use, still to be determined, of the Windemere Basin, presently designated according to the City as a special policy area.

LEGAL

3.1 Definition "Navigation and Shipping"

3.2 Definition "Waterfront Property"

3.3 Jurisdiction in Hamilton Harbour

3.4 Definition of "Harbour Headline"

RECOMMENDATION

3.1 DEFINITION "NAVIGATION AND SHIPPING"

- (a) THAT A GENERAL INTERPRETATION OF THE TERM "NAVIGATION AND SHIPPING" NOT BE ACCEPTED, BUT THAT EACH INTERPRETATION OF THIS TERM REST WITH THE CIRCUMSTANCES SURROUNDING THE PARTICULAR CASE OR SITUATION AT HAND; AND
- (b) THAT, NOTWITHSTANDING SECTION (a) ABOVE THAT, THE CITY OF HAMILTON AND THE HAMILTON HARBOUR COMMISSIONERS MEET IN ORDER TO AGREE ON A CLARIFICATION OF THE TERM "NAVIGATION AND SHIPPING," AS RECOMMENDED IN THE REPORT OF THIS TASK FORCE'S PLANNING SUBCOMMITTEE, AND OUTLINED IN RECOMMENDATION 2.3.

BACKGROUND: Constitutionally the Parliament of Canada has the exclusive legislative authority in relation to all matters coming within the subject-matter of navigation and shipping.¹ Implicit in this authority is the legislative jurisdiction over the subject-matter of harbours.² Accordingly, Parliament had the legislative authority to establish the Hamilton Harbour Commissioners.³ By statute, Parliament has conferred on the Hamilton Harbour Commissioners absolute⁴ jurisdiction over land uses on lands owned by the Commissioners within the limits of Hamilton harbour, to be developed for shipping and navigation or harbour purposes.⁵ Also, by statute, Parliament, with respect to privately owned lands within the harbour, has conferred jurisdiction on the Hamilton Harbour Commissioners to enact by-laws controlling the use of such private lands to the extent such land uses might interfere with the navigation and shipping activities of the harbour, but the Commissioners are not permitted to exercise their jurisdiction in such a way as to affect the proprietary rights of private land owners.⁶

RATIONALE:

A. Definitions

In view of the significance of navigation and shipping in determining the Hamilton Harbour Commissioners' jurisdiction to develop their own lands and to enact by-laws controlling the use of private lands, a definition of navigation and shipping might be useful.

Although "navigation" has not been defined in any federal legislation,⁷ it has been described in one case as "a well known term connoting the travel of ships on water from one point to another"⁸ and has been noted in the same case as having been defined in several leading dictionaries as follows:⁹

The Shorter Oxford English Dictionary

Navigation 1. The action of navigating; The action or practice of passing on water in ships or other vessels 2. The art or science of directing the movements of vessels on the sea

The Living Webster Encyclopedia Dictionary of the English Language

Navigate. To travel on water or boats
Navigation. The art of navigating; the science or art of managing ships; the science of determining the location, speed, destination, and direction of airplanes and other craft.

Black's Law Dictionary, 4th ed.¹⁰

Navigation. The art or science or the business of traversing the sea or other waters in ships or vessels.

Stroud's Judicial Dictionary, 4th ed.

Navigation. (1) "Navigation" is "the science or art of conducting a ship from one place to another"

The case in which those definitions are found is not binding authority in Ontario. Elsewhere, "navigation" has been defined as "methods of determining a ship's position and course by geometry and nautical astronomy. . . ." ¹¹

Likewise, "shipping" has not been defined in any federal legislation.¹² Nor has it been defined in any Canadian case. Elsewhere, "shipping" has been defined as follows:¹³

Ships in general; ships or vessels of any kind intended for navigation. Relating to ships; as, shipping interests, shipping affairs, shipping business, shipping concerns Putting on board a ship or vessel, or receiving on board a vessel,

*while the "law of shipping" has been described as follows:*¹⁴

A comprehensive term for all that part of the maritime law which relates to ships and the persons employed in or about them. It embraces such subjects as the building and equipment of vessels, their registration and nationality, their ownership and inspection, their employment (including charter-parties, freight, demurrage, towage and salvage), and their sale, transfer and mortgage; also, the employment, rights, powers, duties of masters and mariners; and the law relating to ship-brokers, ship-agents, pilots, etc.

Clearly, navigation and shipping have not been defined with a great degree of specificity. Also, there does not appear to be any widely accepted judicial or legislative definitions of those terms in Canada. In addition, from a legal point of view, definitions, by themselves, are rarely sufficient to make a determination with respect to jurisdiction. For instance, the definitions that have been presented here afford little insight into the constitutional question whether the Hamilton Harbour Commissioners are acting within their jurisdiction when they develop their own lands or enact by-laws controlling the use of private lands. Such definitions provide, at most, a reference point but are in no way determinative of such jurisdictional questions. Therefore, they cannot be treated in isolation.

B. Rule of Interpretation

Much more important than any definition in understanding the power over navigation and shipping is the rule that the Courts have applied in interpreting the scope of this power. In this regard it is important to note that the power to control navigation and shipping, at least as it has been conferred on Parliament, is to be widely construed.¹⁵ As a result, Parliament's power over navigation and shipping has been interpreted as conferring upon Parliament legislative competence over navigable waters, works of navigation, harbours (which was mentioned earlier), and a far-reaching body of maritime or admiralty law, which includes law regarding liability for loss or delay of a ship's cargo, liability for loss of life or personal injury caused by a ship, marine insurance, the sale, purchase and ownership of ships, the construction, repair and maintenance of ships, and pilotage and towage.¹⁶

In summation, the power over navigation and shipping has been given a liberal interpretation by the Courts.

C. Tests

Equally important as the relevant rule of interpretation are the tests that the Courts have applied, admittedly in other contexts, such as labour relations, to determine whether a particular undertaking falls within federal jurisdiction over navigation and shipping or within provincial jurisdiction over some other subject matter. One test is called the test of dominant features and objects.¹⁷ According to this test, the dominant features and objects of an undertaking must be examined in order to determine whether the undertaking falls within federal jurisdiction over navigation and shipping.¹⁸ Where an undertaking has some navigation and some shipping but these features are strictly incidental and subordinate to a totally different activity, the undertaking does not fall within federal jurisdiction over navigation and shipping.¹⁹ Another test that has been applied bases its determination of jurisdiction on whether the undertaking can be regarded as an essential part of navigation or shipping.²⁰ It is really a variation on the same theme. So too is a third test that examines whether the undertaking is intimately connected with navigation and shipping.²¹

In any event, to illustrate the application of these tests, a company whose main object was the establishment of offshore oil and gas drilling sites and which incidentally to its operations used ships and boats for transporting workers and materials to the sites and for servicing the crews operating the drilling rigs and welding the necessary piping was held not to be engaged in navigation and shipping in the constitutional sense.²²

D. Conclusion

The term "navigation and shipping" can be defined in a general sense, but not likely with the precision required to develop firm guidelines to assist in the determination of whether a particular undertaking falls within federal jurisdiction over that subject matter. Furthermore, even if this term could be defined with precision, there is always the risk that the resulting definition could fail to anticipate future developments in the field of navigation and shipping that might alter the ordinary meaning of the term to the benefit of one party or to the detriment of another. Nevertheless, in the determination of question of jurisdiction, at least as it pertains to the Hamilton Harbour Commissioners, the Commissioners, who are, to a certain extent, delegates of Parliament's power over navigation and shipping within the limits of Hamilton harbour, are probably subject to the same standards as Parliament in the interpretation of their power over navigation and shipping. Therefore, any exercise of this power by the Commissioners is probably subject to the rule of broad interpretation and to the test of dominant features and objects. These principles can only be applied on a case-by-case basis.

The preceding discussion should not be understood to preclude cooperation between the City of Hamilton and the Hamilton Harbour Commissioners on the meaning of the term "navigation and shipping." As was pointed out in a report presented by Ian Binnie, the City's legal counsel for the proceedings pertaining to the draft Official Plan amendment respecting the harbour, to the Planning and Development Committee of the City Council at a special meeting of the Committee held on June 8th, 1988, "[t]he City and the Commissioners may agree upon where they think the jurisdictional line should be drawn," but, as he cautioned the Committee, "any private land owner could ignore the agreement and apply to the court for a declaration that the by-laws of the Commissioners or the City (as the case may be) are ultra vires or inoperative." (Emphasis is his.)

END NOTES

1. Constitution Act, 1867, s. 91(10).
2. Hamilton Harbour Commissioners v. Corporation of City of Hamilton et al (1976), 1.M.P.L.R. 133, at 154-156 (Ont. H.C.); affd. by (1978), 6 M.P.L.R. 183 (C.A.). Application for leave to appeal to Supreme Court of Canada abandoned.
3. Ibid. See The Hamilton Harbour Commissioners' Act, S.C. 1912, c. 98.
4. But see Hamilton Harbour Commissioners v. Corporation of City of Hamilton, endnote 2, supra, at 165:

Mere ownership by the Commissioners of land within the harbour limits does not per se render such lands immune to municipal and provincial laws of general application. Lands owned by the Commissioners and not presently being used for harbour purposes are legitimate objects of the land use controls of the City and the zoning by-laws only become suspended when they operate to prevent or interfere with the right of the Commissioners to develop such lands for shipping and navigation. If the Commissioners saw fit to sell such lands to be developed for non-harbour purposes or if the Commissioners undertook to develop the lands for purposes unconnected with shipping or navigation, it seems ... entirely reasonable that the by-laws of the City should have application to control the use to which such lands would be put.

5. Ibid., at 157.
6. Ibid.
7. E.g., Canada Shipping Act, R.S.C. 1985, c. S-9;
Federal Court Act, R.S.C. 1985, c. F-7.
8. Dome Petroleum Limited v. Hunt International
Petroleum Company of Canada et al., [1978] 1 F.C. 11,
at 15 (T.D.).
9. Ibid.
10. The same definition appears in Black's Law
Dictionary, (5th ed., 1979). 927.
11. The Concise Oxford Dictionary of Current English
(5th ed., 1964), 804.
12. E.g., Canada Shipping Act, R.S.C. 1985, c. S-9;
Federal Court Act R.S.C. 1985, c. F-7. However,
"ship" is defined in the Canada Shipping Act to
include (a) every description of vessel used in
navigation and not propelled by oars and (b), for the
purpose of Part I and sections 574 to 581 of the Act,
every description of lighter, barge or like vessel
used in navigation in Canada however propelled (s.
2). Incidentally, "vessel is defined in the Act to
include any ship or boat or any other description of
vessel used or designed to be used in navigation (s.
2). Similarly, "ship" is defined in the Federal
Court Act to include any description of vessel or
boat used or designed for use in navigation without
regard to method or lack of propulsion (s. 2).
13. Black's Law Dictionary, op. cit., endnote 10, 1235.
14. Ibid.

15. City of Montreal v. Montreal Harbour Commissioners, [1926] 1 D.L.R. 840, at 848 (J.C.P.C.) (Que); Reference re Validity of Industrial Relations and Dispute Investigation Act and Its Applicability in respect of Certain Employees of Eastern Canada Stevedoring Co. Ltd., [1955] S.C.R. 526, at 535. A similar broad construction was given to the phrase "navigation and shipping", as used in subsection 22(1) of the Federal Court Act: K.J. Preiswerck Limited v. the Ship "Allunga", [1977] 1 F.C. 259 (T.D.).
16. Hogg, Constitutional Law of Canada, (2nd ed., 1985), 494-495.
17. Regina v. Ont. L.R. Bd., Ex Parte Underwater Gas Dev. Ltd., [1960] O.R. 416 (C.A.); Sumitomo Shoji Canada Ltd. v. The Ship "Juzan Maru" et al., [1974] F.C. 488 (T.D.).
18. Regina v. Ont. L.R. Bd., Ex Parte Underwater Gas Dev. Ltd., Ibid., at 428.
19. Ibid.; Dome Petroleum Limited, endnote 8, supra, at 14-15.
20. Reference re validity of Industrial Relations and Disputes Investigation Act and Its Applicability in respect of Certain Employees of Eastern Canada Stevedoring Co. Ltd., endnote 15, supra, at 541, 583; Regina v. Ont. L.R. Bd., Ex Parte Underwater Gas Dev. Ltd., ibid.
21. Sumitomo Shoji Canada Ltd., endnote 17, supra, at 495.
22. Regina v. Ont. L.R. Bd., Ex Parte Underwater Gas Dev. Ltd., endnote 17, supra. Nor is it in the legislative sense: see Dome Petroleum Limited, endnote 8, supra.

RECOMMENDATION

3.2 DEFINITION "WATERFRONT PROPERTY"

- (a) THAT THE DEFINITION OF THE TERM "WATERFRONT PROPERTY" SET OUT IN THE JUDGMENT OF MR. JUSTICE GRIFFITHS, AS AFFIRMED BY THE ONTARIO COURT OF APPEAL, IN HAMILTON HARBOUR COMMISSIONERS V. THE CORPORATION OF THE CITY OF HAMILTON ET AL BE ACCEPTED AS THE LEGAL DEFINITION OF THE TERM "WATERFRONT PROPERTY" FOR THE PURPOSES OF THE HAMILTON HARBOUR COMMISSIONERS' ACT.
- (b) THAT, THEREFORE, THE TERM "WATERFRONT PROPERTY" BE DEFINED TO MEAN "THAT REAL PROPERTY ABUTTING OR FRONTING ON THE BODY OF WATER THAT CONSTITUTES HAMILTON HARBOUR."

BACKGROUND: The Hamilton Harbour Commissioners' Act has defined the limits of Hamilton harbour to include "all the waters of Burlington Bay and what is known as Cootes Paradise, together with inlets thereof (excepting, however, Burlington Channel), and also waterfront property, water lots, piers, docks, shores and beaches in and along the said bay and waters." Under this Act, the Hamilton Harbour Commissioners, except in so far as private property or rights are concerned, have jurisdiction within the limits of Hamilton harbour. However, in defining the harbour limits over which the Hamilton Harbour Commissioners have jurisdiction, the Act does not define "waterfront property", among other terms. Our Subcommittee has been asked to provide a legal definition of this term.

RATIONALE: Mr. Justice Griffiths (as he then was) of the Ontario High Court of Justice in Hamilton Harbour Commissioners v. Corporation of City of Hamilton et al also observed that The Hamilton Harbour Commissioners' Act does not define "waterfront property." Although it may not have been necessary for the purposes of that case to do so, His Lordship interpreted "waterfront property" to mean "that real property abutting or fronting on the body of water that constitutes Hamilton harbour." On appeal his interpretation was not questioned, in any respect, by the Ontario Court of Appeal. Therefore, until overruled by the Ontario Court of Appeal or the Supreme Court of Canada in a subsequent case, Mr. Justice Griffiths' interpretation

of the meaning of "waterfront property" is the legal definition of that term that applies under The Hamilton Harbour Commissioners' Act. What actually constitutes "waterfront property" in or along Hamilton harbour is a question of fact that must be resolved by the Courts or by agreement of any parties interested in the matter.

RECOMMENDATION

3.3 JURISDICTION IN HAMILTON HARBOUR

- (a) THAT THE PRINCIPLES SET OUT IN THE JUDGMENT OF MR. JUSTICE GRIFFITHS, AS AFFIRMED AND AUGMENTED BY THE ONTARIO COURT OF APPEAL, IN HAMILTON HARBOUR COMMISSIONERS V. THE CORPORATION OF THE CITY OF HAMILTON ET AL BE ACCEPTED AS THE LAW APPLICABLE TO THE ISSUE OF JURISDICTION IN HAMILTON HARBOUR.
- (b) THAT, ACCORDINGLY, IT BE RECOGNIZED THAT,
 - (i) THE CITY MAY VALIDLY PASS A ZONING BY-LAW AFFECTING LAND USE WITHIN THE HARBOUR SO LONG AS THE BY-LAW DOES NOT EXPLICITLY ATTEMPT TO PROHIBIT OR REGULATE THE USE OF LAND FOR PURPOSES RELATED TO NAVIGATION AND SHIPPING OR THE USE OF LAND OWNED BY THE FEDERAL CROWN;
 - (ii) THE COMMISSIONERS MAY VALIDLY PASS BY-LAWS TO REGULATE THE USE AND DEVELOPMENT OF LAND WITHIN THE HARBOUR FOR PURPOSES RELATED TO NAVIGATION AND SHIPPING; AND
 - (iii) IF A DIRECT CONFLICT ARISES BETWEEN A VALIDLY-ENACTED CITY ZONING BY-LAW AND A VALIDLY-ENACTED COMMISSIONERS BY-LAW WITH RESPECT TO THE USE OF A PARCEL OF LAND WITHIN THE HARBOUR, THE OPERATION OF THE CITY ZONING BY-LAW IS SUSPENDED DURING THE OPERATION OF THE COMMISSIONERS BY-LAW.

BACKGROUND: The question has arisen whether the Hamilton Harbour Commissioners exercise exclusive jurisdiction to regulate the use and development of lands within Hamilton harbour or whether they share this authority with the City of Hamilton.

RATIONALE: The issue of jurisdiction in Hamilton harbour appears to have been settled by the Judgment of Mr. Justice Griffiths (as he then was) of the Ontario High Court of Justice in HAMILTON HARBOUR COMMISSIONERS v. CORPORATION OF CITY OF HAMILTON. His Judgment was subsequently affirmed, for the most part, by the Ontario Court of Appeal. The relevant legal principles as extracted from Mr. Justice Griffiths' Judgment are as follows:

1. Land use control within Hamilton harbour has both provincial and federal aspects. The City of Hamilton pursuant to the Ontario Planning Act may validly pass a zoning by-law affecting land use within the harbour so long as it does not explicitly attempt to prohibit or regulate the use of land for purposes related to navigation and shipping. Similarly, the Hamilton Harbour Commissioners, pursuant to The Hamilton Harbour Commissioners' Act, may validly pass by-laws to regulate and control the use and development of land within the harbour for purposes related to navigation and shipping. Only if conflict arises with respect to the use of a parcel of land within the limits of the harbour, will the paramountcy of the federal power cause the operation of the by-law of the City to be suspended.

Conflict is to be understood in the sense that compliance with one law involves breaching the other. Consequently, the Hamilton Harbour Commissioners do not have exclusive jurisdiction to regulate the use and development of any lands and property within the limits of Hamilton harbour.

2. Mere ownership by the Hamilton Harbour Commissioners of land within the harbour limits does not by itself render such lands immune to municipal and provincial laws of general application. Lands owned by the Commissioners and not presently used for harbour purposes are legitimate objects of the land use controls of the City and the zoning by-laws only become suspended when they operate to prevent or interfere with the right of the Commissioners to develop such lands for shipping and navigation. If the Commissioners saw fit to sell such lands to be developed for non-harbour purposes, or if the Commissioners undertook to develop the lands for purposes unconnected with shipping or navigation, it is entirely reasonable that the by-laws of the City should have application to control the use to which such lands would be put.

To this the Ontario Court of Appeal added the following:

3. The Province of Ontario and the City of Hamilton have clearly no jurisdiction in respect of the land surrounding Hamilton harbour that is owned by the Federal Crown.

These legal principles appear to resolve the issue of jurisdiction in Hamilton harbour. Nothing short of a constitutional amendment or an agreement to the contrary that binds all interested parties will change this situation.

RECOMMENDATION

3.4 DEFINITION OF "HARBOUR HEADLINE"

- (a) THAT THE DEFINITION OF THE TERM "HARBOUR HEADLINE" SET OUT IN THE JUDGMENT OF MR. JUSTICE GRIFFITHS, AS AFFIRMED BY THE ONTARIO COURT OF APPEAL, IN HAMILTON HARBOUR COMMISSIONERS V. THE CORPORATION OF THE CITY OF HAMILTON ET AL BE ACCEPTED AS THE PROPER LEGAL DEFINITION OF THE TERM "HARBOUR HEADLINE" FOR THE PURPOSES OF THE MANAGEMENT AND OPERATION OF NAVIGATION AND SHIPPING IN HAMILTON HARBOUR.
- (b) THAT, THEREFORE, THE TERM "HARBOUR HEADLINE" BE DEFINED AS "A LINE ESTABLISHED OUT FROM THE SHORELINE BEYOND WHICH BREAKWATERS, WHARFS, PIERS AND OTHER STRUCTURES MAY NOT BE BUILT."
- (c) THAT ANY BY-LAW PASSED BY THE HAMILTON HARBOUR COMMISSIONERS TO ESTABLISH OR AMEND THE "HARBOUR HEADLINE" FOR HAMILTON HARBOUR COMPLY WITH SUBSECTION 20(2) OF THE HAMILTON HARBOUR COMMISSIONERS' ACT, WHICH STATES THE FOLLOWING:

NO BY-LAW SHALL HAVE FORCE OR EFFECT UNTIL CONFIRMED BY THE GOVERNOR IN COUNCIL AND PUBLISHED IN THE CANADA GAZETTE, AND EVERY SUCH BY-LAW SHALL, AT LEAST TEN DAYS BEFORE IT IS SUBMITTED TO THE GOVERNOR IN COUNCIL, BE SERVED UPON THE CITY CLERK OF HAMILTON

BACKGROUND

"Harbour headline" is a critical term in understanding the management and operation of navigation and shipping in a harbour like Hamilton harbour. It is a term, however, that is neither defined nor even specifically referred to in The Hamilton Harbour Commissioners' Act.

By Dominion Order-in-Council P.C. 1016 dated April 15th, 1914, the Government of Canada established the harbour headline for Hamilton harbour. This harbour headline continued in effect until extended in 1958 by Hamilton Harbour Commissioners By-law 81 confirmed by Dominion Order-in-Council P.C. 1958-1552. Apparently it was further amended by 1972 by a Hamilton Harbour Commissioners By-law to implement a land exchange between the Hamilton Harbour Commissioners and Stelco and Dofasco. Unlike in the

previous instance, there is no record in The Canada Gazette, Part II of the confirmation of this by-law by a Dominion Order-in-Council. In fact, since 1958, there is no record at all of any Dominion Order-in-Council confirming a Hamilton Harbour Commissioners' by-law passed for the purpose of establishing or amending the Hamilton harbour headline. (Copies of the Index to The Canada Gazette, Part II for the years 1976 and 1977 were not available at the time that this Report was written.)

Our Subcommittee has been asked to provide a legal definition of "harbour headline" and to determine how the Hamilton Harbour Commissioners at the present time establish or amend the Hamilton harbour headline.

RATIONALE

a. Definition of Harbour Headline

In Hamilton Harbour Commissioners v. The Corporation of the City of Hamilton et al Mr. Justice Griffiths (as he then was) of the Ontario High Court of Justice observed that the Hamilton Harbour Commissioners exercise control of the use of land under water in proximity to the shoreline of Hamilton harbour by establishing what is known as a "harbour headline." Although it may not have been necessary to do so, His Lordship then defined "harbour headline" as "a line established out from the shoreline beyond which breakwaters, wharfs, piers and other structures may not be built." According to him, "the location of the headline is determined by a number of factors, including the depth of the water and the economic feasibility of building." On appeal His Lordship's definition of "harbour headline" was not questioned, in any respect, by the Ontario Court of Appeal. Therefore, until overruled by the Ontario Court of Appeal or the Supreme Court of Canada in a subsequent case, Mr. Justice Griffiths' definition of "harbour headline" must be considered the proper legal definition of that term for the purpose of the management and operation of navigation and shipping in Hamilton harbour.

b. How the Hamilton Harbour Headline is Now Established or Amended

Also in his Judgment Mr. Justice Griffiths made the following findings of fact:

Until 1970 the Dominion government established or amended harbour headlines in Hamilton harbour by issuing ... Orders-in-Council Since 1970 the sole authority has been vested in the Commissioners to establish or amend the Hamilton harbour headlines.

Neither finding was questioned by the Ontario Court of Appeal.

When the Hamilton harbour headline was first established in 1914, it was clearly done by Dominion Order-in-Council. However, when the headline was extended in 1958, it was done by Hamilton Harbour Commissioner By-law confirmed by Dominion Order-in-Council, not by Dominion Order-in-Council alone. When the headline was further amended in 1972, it apparently was done by Dominion Order-in-Council.

When a member of our Subcommittee asked an official of the Hamilton Harbour Commissioners about how the Hamilton harbour headline is now established or amended, he was told that it is done by by-law and that, as is the case with other by-laws, this by-law is served upon the City Clerk before it is submitted to the federal cabinet for confirmation and for publication in The Canada Gazette. (Incidentally, he was also told that generally it takes from 12 to 16 months for a Hamilton Harbour Commissioner By-law to be confirmed by the federal cabinet, though in one instance it took only 3 months.)

The by-law making authority of the Hamilton Harbour Commissioners is found in sections 15 and 20 of The Hamilton Harbour Commissioners' Act. Section 15 provides that the Hamilton Harbour Commissioners "may regulate and control the use and development of all land and property on the water front within the limits of the Harbour of Hamilton, and all docks, wharfs, buildings and equipment erected or used in connection therewith, and for these purposes may pass by-laws as hereinafter provided." What is "hereinafter provided" is section 20, which lists the purposes for which the Hamilton Harbour Commissioners may pass by-laws. Of critical importance in the present importance in the present exercise is subsection 20(2). It reads: "No by-law shall have force or effect until confirmed by the Governor in Council and published in The Canada Gazette, and every such by-law shall, at least ten days before it is submitted to the Governor in Council, be served upon the City Clerk of Hamilton."

The Hamilton Harbour Commissioners purport to exercise their power to establish or amend the headline for Hamilton harbour by by-law. Section 20 of The Hamilton Harbour Commissioners' Act lists the purposes for which the Hamilton Harbour Commissioners may pass by-laws. In order for a by-law of the Hamilton Harbour Commissioners to be valid, it must be passed under the authority of one of the purposes listed in section 20. There is no reason to doubt that the Harbour

Commissioners' power to establish or amend the harbour headline falls within one of those purposes. Paragraphs 20(a) and (b) are the likely purposes supporting the exercise of this power. If the above is true, then subsection 20(2) of the Act applies to by-laws passed by the Harbour Commissioners to establish or amend the harbour headline. If such is not the case, then it should be.

POLITICAL

- 4.1 *Ice Safety*
- 4.2 *Boating Safety*
- 4.3 *Hamilton Harbour Commission By-laws*
- 4.4 *Composition of Hamilton Harbour Commissioners*
- 4.5 *Financial Statements - Harbour Commissioners*

RECOMMENDATION

4.1 ICE SAFETY

THAT CITY COUNCIL REQUEST THE HAMILTON-WENTWORTH REGIONAL POLICE COMMISSION TO DIRECT THE MARINE UNIT OF THE REGIONAL POLICE DEPARTMENT TO BE RESPONSIBLE FOR THE TESTING, POSTING OF WARNINGS, AND PUBLIC ANNOUNCEMENTS RESPECTING THE ICE CONDITIONS IN HAMILTON HARBOUR AND COOTES PARADISE.

BACKGROUND: During the Task Force's deliberations, it was informed that the determination of safe ice conditions in Hamilton Harbour and Cootes Paradise is the users responsibility.

RATIONALE FOR RECOMMENDATION: The Task Force believes that public safety is severely threatened unless ice conditions are routinely checked, monitored, posted and public announcements made. It is the opinion of the Task Force that the best equipped organization to carry out this function is the Marine Unit of the Hamilton-Wentworth Regional Police Department.

RECOMMENDATION

4.2 BOATING SAFETY

- (a) THAT CITY COUNCIL PETITION THE FEDERAL AND PROVINCIAL GOVERNMENTS TO STUDY THE MATTER OF BOATING SAFETY AND THE OPERATORS' KNOWLEDGE AND ABILITY TO PERFORM SAFELY IN AND THROUGH ONTARIO'S WATERWAYS BY INSTITUTING A SYSTEM OF TESTING AND LICENCING OPERATORS OF VESSELS OVER 10 H.P.
- (b) THAT THE FEDERATION OF CANADIAN MUNICIPALITIES AND THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO BE NOTIFIED OF THIS PETITIONING.

BACKGROUND: In 1912 the Council of the City of Hamilton drafted legislation respecting Hamilton Harbour. The legislation was enacted by the House of Commons of Canada and cited as "The Hamilton Harbour Commissioner's Act". Section 20(a)(h)(i) of this Act are relevant to the above.

Section 20(a) - To regulate and control navigation and all works and operations within the harbour, and to appoint constables and other officials to enforce the same, or to enforce the provisions of any statutes or marine regulations relating to the harbour.

Section 20(h) - For regulating and controlling the operation and use of all canoes, sailing boats, row boats, motor boats and other kind of craft within the limits of the area over which the Corporation has jurisdiction.

Section 20(i) -

To impose penalties upon persons infringing any of the provisions of this Act or the by-laws of the Corporation; such penalties not to exceed fifty dollars or thirty days' imprisonment, and in default of payment of such pecuniary penalty and the costs of conviction, the period of imprisonment to be fixed by by-law not to exceed sixty days, nor to continue after such payment is made.

Until February 1986, the Hamilton Harbour Commission maintained and operated a Harbour Police Unit. The unit concerned itself with public safety, search and rescue, general policing of the harbour and the testing and licencing of boaters.

The Harbour Commission discontinued the practice of licencing boaters as it was their view it was unconstitutional. Toronto Harbour Commissioners continue to licence power vessels over 10 H.P.

Since February 1986 the Hamilton-Wentworth Regional Police have assumed the policing functions over Hamilton Harbour. Because there is no by-law requiring the testing and licencing of boaters in Hamilton Harbour this function is not being done.

RATIONALE FOR RECOMMENDATION: The increasing number of motorcraft operators on the bay who lack the knowledge of safe boating procedures and operations is continually increasing. The threat to public safety on the waterways is also increasing. The Task Force is of the opinion that operating licenses would assist to improve and enhance public safety.

The Task Force recognizes that a process of testing and licencing boaters locally would be of some benefit. The issue however is much broader in scope and, therefore, requires a broader course of action.

Boaters who visit Hamilton Harbour may not be licenced. The public deserves some degree of confidence that these operators have also been tested and licensed.

The Task Force believes this problem is apparent in harbours and waterways throughout Ontario and will increase over time. The Task Force is of the opinion that a province-wide approach would more adequately address the concerns. The Provincial and Federal Governments would also be in a better position to deal with any constitutional difficulties that may exist.

RECOMMENDATION

4.3 HAMILTON HARBOUR COMMISSION BY-LAWS

- (a) THAT ADHERENCE TO SECTION 20, SUB-SECTION OF THE HAMILTON HARBOUR COMMISSIONERS' ACT WHICH READS:

"NO BY-LAW SHALL HAVE FORCE OR EFFECT UNTIL CONFIRMED BY THE GOVERNOR IN COUNCIL AND PUBLISHED IN THE CANADA GAZETTE, AND EVERY SUCH BY-LAW SHALL, AT LEAST TEN DAYS BEFORE IT IS SUBMITTED TO THE GOVERNOR IN COUNCIL BE SERVED UPON THE CITY CLERK OF HAMILTON"

BE CARRIED OUT AS INTENDED.

- (b) THAT THE CITY CLERK ADVISE CITY COUNCIL WHEN BY-LAWS ARE RECEIVED AND THAT SUCH BY-LAWS BE REFERRED TO THE APPROPRIATE COMMITTEE OF CITY COUNCIL FOR THEIR INFORMATION AND DISCUSSION.
- (c) THAT THE 10 DAY NOTIFICATION PERIOD BE MONITORED BY THE CITY CLERK TO DETERMINE ITS APPROPRIATENESS.

BACKGROUND: During the Task Force's meetings, the following section of the Hamilton Harbour Commissioners' Act was discussed:

Section 20 - "The Corporation may make by-laws. not contrary to law or to the provisions of this Act, for the following purposes: -

Sub-section 2 - No by-law shall have force or effect until confirmed by the Governor in Council and published in the Canada Gazette, and every such by-law shall, at least ten days before it is submitted to the Governor in Council, be served upon the City Clerk of Hamilton".

RATIONALE FOR RECOMMENDATION: There appears to be doubt as to the implementation of this section of the Act. The Letter dated March 3rd, 1938 from then City Solicitor A. J. Polson attached herewith and marked Appendix 7, assists to clarify the intent of Section 20, Sub-section 2.

It is the Task Force's opinion that Mr. Polson's understanding of the intent of Section 20, Sub-section 2 is correct and the recommendation above, if implemented, would rectify a present reporting weakness.

RECOMMENDATION

4.4 COMPOSITION OF HAMILTON HARBOUR COMMISSIONERS

THAT CITY COUNCIL PETITION THE FEDERAL GOVERNMENT TO AMEND THE HAMILTON HARBOUR COMMISSIONERS' ACT AS FOLLOWS:

- (A) INCREASE THE MEMBERSHIP FROM 3 TO 5 MEMBERS;
- (B) THAT 3 MEMBERS BE APPOINTED BY THE FEDERAL GOVERNMENT, AND 2 MEMBERS BY THE HAMILTON CITY COUNCIL.
- (C) THAT SUB-SECTION 4 OF SECTION 6 OF THE ACT WHICH READS:

"NO MEMBER OF THE COUNCIL SHALL BE
ELIGIBLE TO BE A COMMISSIONER"

BE REPEALED.

- (D) THAT THE TWO MEMBERS APPOINTED BY HAMILTON CITY COUNCIL, REFERRED TO IN RECOMMENDATION (B) ABOVE, CONSIST OF AT LEAST ONE PERSON WHO IS NOT A MEMBER OF HAMILTON CITY COUNCIL.

BACKGROUND: During the Task Force's deliberations, a number of problems vis-a-vis the Harbour Commission and City Council were discussed. There is clearly a long history of disputes, differences of opinion, and conflict over roles, responsibility, authority and control. Because of these differences of opinion, co-operation and communications became strained, rigid, and extremely formalized.

The Hamilton Harbour Commissioners' Act, which was drafted by the City of Hamilton has been interpreted by the City in a manner that confers upon the Hamilton Harbour Commissioners several powers with broad accountability to the City. The Harbour Commissioners believe they are virtually immune from accountability, except in a very narrow sense.

COMPOSITION OF CORPORATION:

"7. The Corporation shall consist of five commissioners, three of whom shall be appointed by the Council of the City of Toronto, one by the Governor in Council; and one by the Governor in Council upon the recommendation of the Board of Trade of the City of Toronto".

RATIONALE FOR RECOMMENDATION: The status quo has proven to be unsatisfactory. The establishment of Harbour Committees in one form or the other continued to result in excessive disagreement and confrontations and needless and expensive court cases.

A review of various Harbour Committee minutes from 1972 to 1987 demonstrates a constant and continuous concern regarding the structure and composition of the Harbour Commission. During the past 21 years a definitive resolution has not been achieved. The above recommendation is directed towards establishing a better relationship between the City and the Harbour Commission.

An increase in communications and co-operation among all parties is a desirable goal worthy of seeking. This recommendation is founded on the belief that communications would dramatically increase immediately upon implementation.

Co-operation would be enhanced over time and a compatible working relationship develop and become increasingly stronger as disagreements and competing interests are more fully discussed and differences resolved.

Through closer contact with each other; common areas of agreement will become a reality. The progress and development of the Harbour as both a strong industrial international port and a magnificent people place will be fully realized.

RECOMMENDATION

4.5 FINANCIAL STATEMENTS - HARBOUR COMMISSIONERS

THAT THE ANNUAL FINANCIAL STATEMENTS OF THE HAMILTON HARBOUR COMMISSIONERS BE REFERRED TO THE APPROPRIATE STANDING COMMITTEES OF COUNCIL FOR EXAMINATION AND DISCUSSION.

**ACTION PLANS
AND
LINES OF RESPONSIBILITY**

ACTION PLANS AND LINES OF RESPONSIBILITY

<u>RECOMMENDATION</u>	<u>ACTION</u>	<u>POLITICAL</u>	<u>STAFF</u>
1.1	Request the Harbour	-Transport &	-T&E Secretary
1.2	Commissioner to commit themselves to the environmental requirements	Environment Committee -City Council	-C.A.O.
1.3	Pursue and advocate for the clean-up of Hamilton Harbour	-T&E Committee -City Council	-T&E Secretary -C.A.O.
1.4	Statement of support by City Council	-City Council	-City Clerk
1.5	Request the Harbour Commissioners to Participate	-City Council	-City Clerk
2.1	Request the Harbour Commissioners Agreement	-City Council -Parks and Recreation Committee	-P&R Secretary -C.A.O.
2.2	Initiate meetings with Burlington	-Co-ordinating Committee -City Council	-Co-ordinating Committee Secretary -City Clerk
2.3	Initiate meetings with Harbour Commissioners	-Planning & Development Committee -City Council	-Planning -Legal
3.1	Accept definitions	-City Council	-City Clerk
3.2	Accept definitions	-City Council	-City Clerk
3.3	Accept definitions	-City Council	-City Clerk
3.4 1(a) 1(b)	Accept definitions	-City Council	-City Clerk

<u>RECOMMENDATION</u>	<u>ACTION</u>	<u>POLITICAL</u>	<u>STAFF</u>
3.4 2	Request Harbour Commissioners Agreement	-Co-ordinating Committee -City Council	-City Clerk
4.1	Send request to Regional Council	-City Council	-City Clerk
4.2 (a) & (b) & (c)	Refer to appropriate bodies	-Legislation Committee -City Council	-Legislation Committee Secretary -City Clerk
4.3 (a) & (b) & (c)	Referral of By-laws to appropriate Committees	-Legislation Committee -City Council	-Legislation Committee Secretary -City Clerk
4.4	Prepare and plan an appropriate strategy for lobby and implementation	-Legislation Committee -City Council	-Legal -Legislation Committee Secretary -City Clerk
4.5	Referral of financial statements to appropriate Committees	-Finance Comm. -City Council	-Treasurer -Finance Co Secretary -City Clerk

A REVIEW AND SELECTED EXCERPTS
FROM THE HARBOUR COMMITTEE
MEETINGS COVERING THE PERIOD
APRIL 4, 1972
TO
MARCH 12, 1987

- STRUCTURE AND COMPOSITION OF THE
HAMILTON HARBOUR COMMISSIONERS
- PUBLIC ACCESS, PARK AND OPEN SPACE
- SURPLUS PROFITS AND FINANCIAL
- PLANNING AND ZONING
- TRUSTEESHIP
- HARBOUR HEADLINE
- QUESTIONS TO THE HARBOUR COMMISSIONERS

STRUCTURE AND COMPOSITION
OF THE
HAMILTON HARBOUR COMMISSIONERS

STRUCTURE AND COMPOSITION OF THE
HAMILTON HARBOUR COMMISSIONERS

CITY COUNCIL, FEBRUARY 27, 1972

"Resolved:

that the City Council refer any question of a change in structure of the Hamilton Harbour Commissioners to the Committee established by Controller Turkstra's motion to examine the Harbour. -"

HARBOUR COMMITTEE, SEPTEMBER 7, 1972

"Apart from small technical matters, it would appear that the only policy statement was one made by Council, January 11, 1966, which was moved by Controller Campbell respecting the composition of the Harbour Commission. It read as follows: That the Federal Government be petitioned to amend the Hamilton Harbour Commissioners Act to change the composition of the Hamilton Harbour Commissioners to five members, three of which will be appointed by City Council and one to be appointed by the Governor-in-Council and the other to be appointed by the Governor-in Council on the recommendation of the Chamber of Commerce".....

"He requested the feeling of the committee as to whether or not the Committee should not debate at the next regular meeting of the Committee the policy position of the City on how the Harbour Commissioners should be constituted as a whole, whether it should be completely under the control of the City, whether there should be a majority of Council Members on the Harbour Commissioner or whether it should be a regular Committee of Council such as the Planning Board. He stated that there are various resolutions on file passed by City Council but that nothing has happened to them.".....

"3. They urge the creation of a review board of elected and citizen representatives from Burlington and Hamilton together with effective provincial and federal participation and that this review board reexamine the role of the Harbour and government relationship to it, and subsequently, the Board should recommend revisions to the Hamilton Harbour Commission Act of 1912 and then produce legislation more in keeping with the needs of a society as we approach the 21st century."

HARBOUR COMMITTEE, SEPTEMBER 28, 1972

"He suggested the Committee review and study the Federal Legislation under which the Hamilton Harbour Commissioners operate and formulate recommendations for submission to City Council on submissions to be made to the Federal Government on the nature and method of operating the Hamilton Harbour".....

"Controller Turkstra distributed copies of the Federal Act passed in 1912 dealing with the constitution of the Hamilton Harbour Commissioners. He recommended the Committee review the Act with the view to developing recommendations for submission to City Council regarding possible changes to the legislation as to how the Hamilton Harbour Commissioners should be constituted. Controller Turkstra indicated that although the Committee does not possess any legal power to change the legislation, it is the duty of this Committee and City Council to develop a position for submission to the Federal Government as to how City Council wants the Hamilton Harbour Commission constituted for the 1970's".....

"Controller Turkstra stated that the following matters should be kept in mind by the members of the Committee when reviewing the Federal Legislation: "

1. Should the Hamilton Harbour Commissioners be a separate Committee, and if so, the question arises whether City Council should be represented on the Committee as opposed to citizen members.
2. If the Hamilton Harbour Commissioners is constituted as a separate Committee, the question arises whether the City of Hamilton should have a majority of the representation.
3. Should there be representatives on the Commission from other municipalities.
4. Should the Commissioners receive the same compensation as they are now receiving under the Trustee Act, and should the matter of compensation be incorporated into the Act respecting the Hamilton Harbour."

HARBOUR COMMITTEE, FEBRUARY 15, 1974

"Firstly, however, 2 outstanding items necessitating Committee consideration:

- (a) Information concerning the status of the increased membership on the Hamilton Harbour Commissioners Board, and".....

HARBOUR COMMITTEE, MAY 22, 1974

"With respect to the increase membership on the Hamilton Harbour Commission, Mr. Alway noted that he will be attending a meeting in Ottawa in this respect and will emphasize the city's position in that the composition should be three Hamilton appointees and two Federal appointees, because of Hamilton's jurisdiction over Harbour waters."

HARBOUR COMMITTEE, APRIL 22, 1975

"The Secretary was directed to request a status report re the City's position on increased membership to the Hamilton Harbour Commissioners."

HARBOUR COMMITTEE, JUNE 26, 1975

"Alderman Don Gray indicated that no reply has yet been received concerning the expansion of the membership of the Hamilton Harbour Commissioners from three to five members."

HARBOUR COMMITTEE, OCTOBER 9, 1975

"The committee approved a recommendation by Alderman Gray to have a delegation made up of the Mayor, members of the Harbour Committee and local members of Parliament to meet with the Federal Minister of Transport in Ottawa to discuss this problem, along with the following:

- 2. Restructuring of the Hamilton Harbour Commission."

HARBOUR COMMITTEE, DECEMBER 18, 1975

"No tentative date has been established for the committee's proposed meeting with the Federal Minister of Transport along with local M.P.'s concerning the problems relating to the Harbour. He indicated that the Ministry has been contacted on numerous occasions by telephone, however, no correspondence has been made due to the extensive mail strike. A letter has now been directed to the Minister requesting the establishment of a meeting date in the near future."

HARBOUR COMMITTEE, APRIL 6, 1976

"Alderman Ford suggested that the committee consider adopting a resolution to Council requesting the Federal Government to provide legislation which would permit the harbour to be operated through a Standing Committee of Council, similar to the present system presently used for the operating of the airport.

It was Alderman Gray's opinion that the Federal Government would not support a proposal of this nature."

HARBOUR COMMITTEE, APRIL 30, 1976

"The Committee considered the present composition of the Harbour Commission. The consensus was that the municipality should receive an additional member in order to insure that matters of City concern receive ample consideration".....

"The Committee then recommended that the Federal Ministry of Transportation be requested to review the composition of the Hamilton Harbour Commissioners to consist of:

- two representatives of the City of Hamilton
- two representatives of the Federal Government
- one representative of the Provincial Government."

HARBOUR COMMITTEE, JUNE 25, 1976

"Relative to the item respecting the proposed restructuring of the Harbour Commissioners, Alderman Gray indicated that the Committee has proceeded as far as possible on this matter; however, support may be obtained from the other Harbour municipalities. He

also noted the amendment made in the Committee's recommendation by the Planning and Development Committee which revised their proposal to have the Harbour Commission be composed of two Federal Representatives, two Municipal Representatives and one Provincial Representative to now consist of four Municipal Representatives, two Federal Representatives and one Provincial Representative."

HARBOUR COMMITTEE, NOVEMBER 20, 1986

"The members of the Committee discussed the imminent appointment of the representatives of the Federal Government to the Harbour Commission.

As the result of a Council resolution His Worship the Mayor wrote to the Prime Minister expressing the Council's strong objection to the appointment of a non-Hamiltonian to the Commission, as had been rumored by the local news media. The Secretary was requested to check with His Worship the Mayor to ascertain if he has had a positive response, and if not, to arrange for a follow-up letter to be sent by courier immediately."

HARBOUR COMMITTEE, MARCH 12, 1987

"Alderman Valeriano had forwarded to the Committee a copy of a letter he had received from Mr. Agro concerning a proposal to increase the membership of the Commission. Before entering into any discussion on the topic, the Secretary was requested to arrange to have a representative from the City's Legal Department attend the meeting, as the members wished to discuss with him the legal implications that might arise. Mr. D. Vickers of the City Solicitor's Department attended the meeting.

The Committee moved into camera to discuss the matter, and on returning to open session it was agreed that no action be taken on the proposal".

PUBLIC ACCESS, PARK AND

OPEN SPACE

PLANNING COMMISSION, JANUARY 11, 1971

The Commission received a report from the Planning Commission on the subject of public access to park and open space. The report was prepared by the Planning Commission and the Planning Commission on the subject of public access to park and open space. The report was prepared by the Planning Commission and the Planning Commission on the subject of public access to park and open space.

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PUBLIC ACCESS, PARK AND OPEN SPACE

HARBOUR COMMITTEE, APRIL 4, 1972

"Mr. B. Humphreys, Chairman of the Halton Region Conservation Authority outlined to the Committee the history leading up to the waterfront study, being conducted jointly by the Halton Region Conservation Authority and the Hamilton Region Conservation Authority.

Mr. Humphreys advised that discussions on a waterfront study commenced in August of 1971 and in September of 1971 a co-ordinating Committee composed of Council members of the various municipalities involved, and a Technical Committee composed of technical staff from the various municipalities was appointed.....

In reply to Alderman Morrow as to whether or not all parties concerned are giving full co-operation to the waterfront study, Mr. Humphreys advised that there was a minor misunderstanding with regard to the Hamilton Harbour Commissioners but that the problems appear to have been overcome."

HARBOUR COMMITTEE, SEPTEMBER 7, 1972

"1. They feel it is essential to remove from the Harbour Commission territory those waters and shores west of lying between Centennial Dock and the east boundary of Woodland Cemetery. That this area be joined to the present open waters of the bay and that these waters together with Cootes Paradise be preserved in perpetuity as open water space."

HARBOUR COMMITTEE, FEBRUARY 15, 1974

"(d) A considerable discussion took place concerning the retaining of the 150 acres south of the canal for recreational purposes and the Commissioners were quite agreeable that this area would be retained for recreational use in conjunction with the Harbour Committee and the Hamilton Region Conservation Authority."

HARBOUR COMMITTEE, MARCH 14, 1974

"The Chairman outlined that the development of lands in the north-end urban renewal area for parks, recreation and waterfront uses was referred back at the last meeting of City Council. It was noted in the Council minutes that Mr. A. Broman has been appointed as the Landscape Architect and will be asking for input from various City bodies including the Harbour Committee with regard to this land. It was suggested that Mr. Broman might be asked to attend a future Harbour Committee meeting for discussions in this respect."

HARBOUR COMMITTEE, MAY 22, 1974

"Following further discussion, it was decided that the City reaffirm its position that the Lax Properties in the West Harbour become a publicly owned open space recreational facility; further that the Harbour Committee be designated as the liaison with the other levels of Government and any agencies dealing with Council and lastly that the Senior Levels of Government be approached for financial assistance in the acquisition of those privately owned properties between the Leander Boat Club and the C.N. Property. The Committee recommends that the Harbour Commission be the agency responsible for reacquiring those properties previously sold or optioned out by the Commission and that the Provincial Government be responsible for the acquisition of on-shore properties."

HARBOUR COMMITTEE, SEPTEMBER 17, 1974

"The Committee also reviewed the areas of confliction between the Waterfront Study with the Official Plan Amendments and Zoning By-laws. Mr. Rouff stated that the City should confer with the Conservation Authority and the Harbour Commissioners respecting the development of the Harbour."

HARBOUR COMMITTEE, OCTOBER 18, 1974

"Moved by Controller R.M. Morrow
Seconded by Mrs. G. Simmons

That the Parks and Recreation Committee or the Harbour Committee hold public meetings with respect to the redevelopment of the harbour lands between the Leander Boat Club and the C.N. Martialling Yards. Further that three alternative plans be prepared with consideration being given to more passive open space recreational area.

CARRIED"

HARBOUR COMMITTEE, DECEMBER 6, 1974

"The Chairman queried the Committee as to which part of the study should be taken to the people and it was generally agreed that the Committee would review the Waterfront Study and where there is disagreement, those areas should be taken to the people for input. Following further discussion on the matter, it was agreed:

That the Harbour Sub-Committee of the Planning and Development Committee call public meetings to present the concept of general land use for the entire Harbour area in an attempt to provide for proper public input."

HARBOUR COMMITTEE, APRIL 22, 1975

"Mr. J.E. Waters and Mr. E. Seager of the Parks Department appeared before the Committee to outline the proposed West Harbour recreational development plan. The Committee perused the plans in detail with a considerable question and answer period following. The Committee then left the meeting room for an on-site inspection of the proposed park land which lies between the Leander Boat Club and the C.N. Martialling Yards."

HARBOUR COMMITTEE, JUNE 26, 1975

"Alderman D. Gray has suggested that the Planning and Development Committee recommend an elected official and a technical member from the Planning and Development Department to participate on a Waterfront Co-ordinating Committee to implement the study's recommendations. Mr. Wm. Powell indicated that good response has been received concerning this study."

HARBOUR COMMITTEE, OCTOBER 9, 1975

"The committee reviewed the report suggesting the "Responsibilities for Implementation made in the Waterfront Study (Hamilton-Wentworth Section)". Mr. Powell pointed out that many of the proposals must receive the approval of City Council."

HARBOUR COMMITTEE, JUNE 20, 1978

"Alderman Wheeler told the Committee that the City should attempt to preserve the beach strip and the land west of the harbour as open space. Alderman Wheeler further commented that the City could hardly be expected to develop a plan respecting the Lax Property until such time as the litigation has been resolved. He stated that the City, with its concern for parkland, and the Harbour Commission, with its concern for industrial development, should endeavour to work out a compromise and proceed from there."

HARBOUR COMMITTEE, JUNE 8, 1979

"Alderman Hinkley informed the committee that the overwhelming public sentiment in this area was to open up the harbour lands and make them more accessible to public use. He stated that he felt that the Lax Property should be left open with the understanding that in future, private developments of this land should be carried out under close City supervision.

Alderman Hinkley informed the committee that it was the unanimous opinion of the C.A.P.A.C. Committee to keep the harbour area open for public use in an attempt to exploit its potential as a prime recreational facility. He further informed the committee that there might be federal and provincial monies available for this type of development.

HARBOUR COMMITTEE, MARCH 30, 1984

"A memo under date of March 5, 1984, was received from the Planning and Development Committee recommending that the Special Harbour Committee approach the Hamilton Harbour Commission to discuss the possibility of the Commission turning over to the City the access corridors and lookouts that are proposed in the development of Piers 25-27. Following a discussion it was the unanimous feeling of the Committee that it would be unreasonable to expect the Harbour Commission to turn over ownership of these access corridors and lookout areas. The Committee did agree that a letter be sent to the Commissioners asking if they would guarantee that, in the event it was necessary to use, for harbour development, the areas where the access corridors and lookouts were located, they provide corridors and lookouts elsewhere on the Harbour."

HARBOUR COMMITTEE, FEBRUARY 22, 1985

"Alderman Hinkley impressed upon the Harbour Commissioners the importance of the Commissioners providing a member to sit on the Committee which is overseeing the West Port Development. Mr. Agro assured the Committee that the Commissioners would provide a member for this Committee."

HARBOUR COMMITTEE, SEPTEMBER 6, 1985

"His Worship the Mayor spoke to the Committee and advised of his disappointment in not having the Hamilton Harbour Commissioners participate in the recent Harbour Day Celebration. He was particularly disturbed over the fact that Mr. Hennessey, of the Harbour Commission, refused to meet with him in his office to discuss the project."

"Alderman Hinkley spoke on the West Harbour Development and expressed his wish that the Harbour Commission would co-operate in this development. The Secretary was requested to insure that Mr. Bartolotti is added to the mailing list of the Waterfront Committee."

HARBOUR COMMITTEE, MARCH 25, 1988

"Mr. J. Agro, Chairman of the Hamilton Harbour Commission, and Mr. C. Furry, Secretary, appeared before the Committee. The Secretary read a letter which was received from the Harbour Commissioners dated February 24, 1986. In this letter the Commissioners indicated that they could see no need to have a representative on the City's Waterfront Sub-Committee. They would also not want to give the impression that by serving on the Committee they have given tacit consent to the development plan."

"During the discussion Mr. Agro indicated that he agreed, in principle, with what was being proposed by the City for the Waterfront Park and he finally agreed to have a representative of the Commission sit on the Sub-Committee."

SURPLUS PROFITS

AND FINANCIAL

WILLIAM W. WILSON, EDITOR, 1912

THE SURPLUS PROFITS AND FINANCIAL STATEMENTS OF THE UNITED STATES GOVERNMENT, prepared by the Department of the Interior, Bureau of Land Management, and the Bureau of Reclamation, are published in this volume. The statements are prepared in accordance with the provisions of the Act of March 3, 1879, (20 Stat. 491), and the Act of March 3, 1891, (26 Stat. 491), and the Act of March 3, 1899, (30 Stat. 491).

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SURPLUS PROFITS AND FINANCIAL

HARBOUR COMMITTEE, SEPTEMBER 28, 1972

"It was moved by Alderman Morrow and seconded by Alderman Ford that the committee proceed to review the financial statements of the Commission with the assistance of Mr. Jaggard. A considerable discussion followed as to the interpretation of the words "surplus profits" as they appear in Section 16 of the Federal Legislation.....

Mr. Jaggard stated that according to the 1970 financial statement of the Hamilton Harbour Commissioners, the bank deposit receipts amount to \$2,500,000.00 which is described as being set aside for future harbour development. Alderman Ford suggested that Mr. Jaggard develop alternative ways of administering the Hamilton Harbour indicating the financial ramifications of those alternatives. The Committee agreed, with Alderman Lombardo opposed, to recommend to the Board of Control that Mr. Jaggard be authorized to retain the services of an independent firm of auditors to undertake a detailed analysis of the financial statements of the Hamilton Harbour Commissioners in an effort to determine whether the profits of the Commission are surplus or non-surplus. The Committee also agreed to recommend to the Board of Control that the City secure a legal opinion as to the intent of the words "surplus profits" under Section 16 of the Act in relation to the present operation of the Harbour."

HARBOUR COMMITTEE, FEBRUARY 9, 1982

"The Committee considered a letter dated January 15, 1982, from Mr. K. A. Rouff, City Solicitor, to the Chairman of the Committee, attaching a letter dated December 30, 1981, from Mr. Ian Binnie, the solicitor who acted on behalf of the City on matters dealing with the Harbour Committee. As a result the members agreed to recommend to City Council the following:

1) Surplus Profits

The Harbour Committee expressed some interest in meeting with representatives of Peat Marwick to review financial aspects of the City's relationship with the Commissioners. The City has invested considerable monies in making Peat Marwick the experts in this area and it might be useful for

members of the Committee to hear what Peat Marwick have to say before developing a City policy on this issue. Peat Marwick are ready to meet with the Committee at the Committee's convenience."

HARBOUR COMMITTEE, APRIL 13, 1982

"Mr. Binnie and Mr. Buchanan reviewed with the Committee the report prepared by Peat Marwick Mitchell & Co., submitted to Mr. Binnie, on the meaning of the phrase "Surplus Profits", contained in Section 16 of the Hamilton Harbour Commissioners Act. This report was dated September 2, 1980.

As a result of the discussion that took place it became evident that it was going to be very difficult to define what constitutes surplus profits. During the discussion Mr. Buchanan, in reply to a question put by the Committee, agreed that it was an unusual practice for an organization or business to have so much liquid capital. This capital consists of money set aside through the years for projects that, to date, have not been undertaken. In an effort to establish surplus profits it was agreed that Mr. Buchanan would prepare a list of questions that the council could put to the Harbour Commissioners."

HARBOUR COMMITTEE, JULY 19, 1982

"Mr. Buchanan submitted to the Committee a list of questions that should be put to the Commissioners, the answers to which would assist at arriving at the amount of surplus profits that should be available to the City. These questions are as follows:

1. We request a schedule or other documentation itemizing the capital expenditures of \$14,500,000 which were approved in the 1980 five-year budget, together with a copy of the resolution approving the expenditure.
2. We require a status report on each expenditure itemized in 1 above, stating whether the feasibility study is completed; the item is out to tender; a contract has been made; construction is underway; or stating what other stage the project has reached.
3. We would like to see a statement of the years in which the capital expenditures of \$14,500,000 will fall due for payment.

4. We wish to see a statement of the proportion of the capital expenditures of \$14,500,000 which will be borne by the Hamilton Harbour Commissioners as opposed to other parties, e.g., the Federal Government.
5. We request a statement on how Hamilton Harbour Commissioners propose to finance their portion of the capital expenditure as between debt and retained earnings.
6. The Commissioners have set aside \$4,500,000 in bank deposit receipts for future harbour improvements to be spent on the development of piers 12/13 and 25/27. Please provide a schedule showing the total costs of development of these piers, how they will be financed, and the years in which the payments will fall due.
7. Please provide a list of the banks in which the \$4,500,000 is deposited showing how much is in each bank.
8. Please provide a copy of the financial forecasts used to justify the proposed capital expenditures of \$14,500,000 showing the effect the expenditures will have on net income (excess of revenues over expenses) and cash flows.
9. We request details of future capital expenditures which are likely to be made in the future, but which have not yet been approved.
10. Please provide a statement on the procedure for approving capital expenditures indicating the stage at which approval takes place, e.g., when formal estimates have been received; when a signed contract is made.
11. Please provide details of any changes at December 31, 1981 compared to December 31, 1980 in approved capital expenditures and appropriations for future harbour improvements, together with the timing of the expenditures and the portion to be borne by the Hamilton Harbour Commissioners.
12. With regard to the years 1973 to 1980 inclusive, we request your reasons for carrying a high level of Appropriation for Future Harbour Improvements, which reached a maximum of \$4.5 million in 1980 and none of which was used during those 8 years to meet expenditures on harbour improvements."

HARBOUR COMMITTEE, APRIL 8, 1983

"The City Solicitor, by letter dated April 8, 1983, forwarded a copy of a reporting letter from Peat, Marwick, Mitchell & Co., Chartered Accountants, to the City's retained legal counsel on the Harbour matters, Mr. G. Strathy. In the Peat, Marwick letter they set out three questions which they felt they needed answers to assist them in determining whether there are any surplus profits in the operation of the Harbour Commissioners. These three questions are as follows:

1. Footnote 3 of the December 31, 1981 financial statements of the Hamilton Harbour Commissioners states that in 1981 the Commissioners approved a five-year budget of \$13.4 million for capital expenditures. The City wishes to know the proportion of these capital expenditures which will be borne by the Hamilton Harbour Commissioners and what proportion will be borne by other parties, e.g., the Federal Government.
2. The City requires a copy of the feasibility studies, financial forecasts and economic studies used to justify the proposed capital expenditures of \$13.4 million showing the effect the expenditures will have on net income (excess of revenues over expenses) and cash flows.
3. The City requires a statement on the procedure followed by the Commissioners in approving capital expenditures indicating the stage at which approval takes place, e.g., when the project has been designed, when the project has been put out to construction companies for tender and estimates been received, when a signed contract is made.

These questions were set out in the original list of questions sent to the Harbour Commissioners in July of 1982 and were not answered. The Secretary was directed to take the necessary action to have these three questions forwarded to the Harbour Commissioners."

HARBOUR COMMITTEE, OCTOBER 14, 1983

"The Committee next had a general discussion on the question of excess profits and the relationship between the Harbour Commissioners and the City Council in light of the Court decision which established the Commissioners as trustees."

HARBOUR COMMITTEE, JANUARY 28, 1986

"Alderman J. Gallagher inquired as to who was accountable for the \$729,972.00 profit which the Harbour Commission made in 1983, as well as the \$4.5 million dollars from the sale of land. He asked where does the money go?

Mayor Morrow replied that this had been a question which was dealt with in the court over several years and that there was no clear cut answer to his question."

P L A N N I N G

A N D

Z O N I N G

PLANNING AND ZONING

HARBOUR COMMITTEE, SEPTEMBER 17, 1974

"The Committee reviewed the matter concerning the Harbour Commissioners objections to the City Official Plan Amendments and Zoning By-laws. Controller Morrow maintained that the basis of negotiations with the Harbour Commissioners is agreement on their part to recognize and abide by the City's Planning powers on and adjacent to the harbour. If they are not willing to abide by these powers then, it would be a matter for the Courts.....

Alderman Wheeler suggested that the Committee request an official letter from the Hamilton Harbour Commissioners specifying their opposition to the Official Plan Amendments and Zoning By-laws. He also stated that in the event that the Commissioners should come to an agreement with the City, they should send a letter of withdrawal to the O.M.B."

HARBOUR COMMITTEE, SEPTEMBER 27, 1974

"Controller Morrow:-

There are six by-laws (Planning) to which the Commissioners are objecting - Planning wants to know where they stand on Planning jurisdiction with respect to the Harbour.

Mr. Ed. Tharen:-

Feels that jurisdiction is given by appropriate legislation - jurisdiction would be abrogated - jurisdiction is not ours to give up. Felt that basically this was not the important aspect. Commission is bound by its authority. If we do this and goes on for years, even if court says yes, every time we get something we want done, back to court again. If we can resolve what we and you want done, we can move to start implementing what can be achieved. Wants to pay justice to the city's representative on the Commission.....

Controller Morrow:-

What compels the Harbour Commission to feel so strongly objecting to our zoning by-law.

Mr. Morison:-

Asked question in reverse - they felt an application to administer according to their by-laws."

HARBOUR COMMITTEE, OCTOBER 17, 1977

"Mayor MacDonald was concerned that in the meantime, the technical staff of the City and the Hamilton Harbour Commission meet with a view to defining a line of demarcation respecting planning and zoning for Harbour land. however, Alderman Wheeler suggested that the Committee should not be supporting this type of negotiation until after the pending court case and bill C-61 have been resolved."

HARBOUR COMMITTEE, JUNE 20, 1978

"Controller Morrow stated that whereas the Draft Official Plan of the Region designates as urban certain portions of the Harbour that at present are water and under the City's Draft Official Plan are included in an open water designation, therefore, moved by Controller Morrow and seconded by Alderman Wheeler that the Planning and Development Committee, through City Council, recommend to Regional Council that the Regional Draft Official Plan include an open water designation as outlined in the City's Draft Official Plan of the Harbour.

CARRIED"

THE TRUSTEESHIP

The Trustee is a person who is appointed by the donor to hold and manage property for the benefit of the donee. The Trustee is a person who is appointed by the donor to hold and manage property for the benefit of the donee. The Trustee is a person who is appointed by the donor to hold and manage property for the benefit of the donee.

THE TRUSTEESHIP

The Trustee is a person who is appointed by the donor to hold and manage property for the benefit of the donee. The Trustee is a person who is appointed by the donor to hold and manage property for the benefit of the donee. The Trustee is a person who is appointed by the donor to hold and manage property for the benefit of the donee.

T R U S T E E S H I P

TRUSTEESHIP

HARBOUR COMMITTEE, APRIL 4, 1972

"Mr. Rouff stated that his interpretation of the Act (1912) was more in the nature of a trust relationship by virtue of the various sections that were meant to give the City some say in the operation of the Harbour. He made reference to a number of the sections of the statutes including section 14."

HARBOUR COMMITTEE, SEPTEMBER 28, 1972

"Controller Turkstra informed the Committee that the compensation paid to the Harbour Commissioners is authorized under the Trustee Act, and that there is no provision in the Federal Legislation for this. Mr. Rouff felt that the matter of compensation should be incorporated into the Federal Act."

HARBOUR COMMITTEE, OCTOBER 14, 1983

"The Committee next had a general discussion on the question of excess profits and the relationship between the Harbour Commissioners and the City Council in light of the court decision which established the Commissioners as trustees."

HARBOUR HEADLINE

ARTICLE ONE OF THE CONSTITUTION

The following are the first sections in the first part of the
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In discussing the first section of the Constitution, Mr. J. H.
Johnson, who was one of the first members of the
Constitution, said that the first section of the Constitution
was the first section of the Constitution.

H A R B O U R

H E A D L I N E

HARBOUR HEADLINE

HARBOUR COMMITTEE, APRIL 4, 1972

"In discussing the Harbour Headline in the west end of the Harbour, Mr. Elliot urged the Committee to give consideration to recommending that the headline be retracted in this area to the present shoreline. Mr. Elliot stated that approximately a year and a half ago a consulting engineering firm recommended that the 150 acres of water lots in the west end of the Harbour should be used for industrial purposes. Mr. Elliot stated that he is opposed to this recommendation and stressed that action be taken immediately to relocate the Harbour Headline.

In discussing the north shore of the Harbour, Mr. Elliot advised that three years ago, the Harbour Commissioners applied to Ottawa for the establishment of a headline on the north shore. The Committee was advised that the matter is still tabled in Ottawa."

Q U E S T I O N S
T O T H E
H A R B O U R
C O M M I S S I O N E R S.

QUESTIONS TO THE HARBOUR COMMISSIONERS

HARBOUR COMMITTEE, JULY 19, 1982

"On the matter of the Harbour Commissioners not providing the answers to the questions that were put to them in February on the securing of the names of insurance agents, etc., that the Harbour Commissioners have dealt with, the Committee agreed that a resolution go to Council advising that the information has not been received and that the questions be once again put to the Commissioners."

HARBOUR COMMITTEE, APRIL 8, 1983

"A letter dated March 17, 1983, was received from Mr. John L. Agro, Chairman of the Hamilton Harbour Commissioners. This letter was in response to Council's resolution which was once again seeking information on the names and amount of monies paid to Real Estate Agents, Lawyers, etc., who have provided a service to the Commissioners since 1964. In this letter Mr. Agro indicated that he had polled the Commissioners and, as a result, he would request that the City Solicitor be instructed to commence such action as he deems advisable. By this action it is implied that the Commissioners will not provide this information. The City Solicitor indicated that he would proceed with the necessary Court action as per the Committee's and Council's direction."

HARBOUR COMMITTEE, JULY 15, 1983

"The City Solicitor, in a letter dated July 15, 1983, advised the Committee that the City was successful in its application to the court to have the Hamilton Harbour Commissioners provide the City with answers to the questions which the City submitted some seventeen months ago and, further, that the Hamilton Harbour Commissioners had been directed to pay the City its costs of the application before the Court. The letter was accompanied by a copy of the Court Order and Judge's Endorsement dated June 30, 1983, together with a copy of a reporting letter dated July 14, 1983 from the City's Legal Counsel."

HARBOUR COMMITTEE, AUGUST 5, 1983

"The members of the committee were provided with copies of two letters, both dated July 27, 1983, from the Hamilton Harbour Commissioners. The one letter provided all the information requested on the Insurance Agencies, Accountants and Lawyers, who had been retained by the Hamilton Harbour Commissioners from 1964 to 1981, and the amount of money paid to each. The second letter set out the answers to the three questions that had been put to the Hamilton Harbour Commissioners and as set out in Section 1 of the third Report of the Special Harbour Committee, adopted by City Council at its meeting held on Tuesday, April 26, 1983. The Committee referred these letters to the City Solicitor with a request that he review them and submit a report to the Committee at its next regular meeting."

APPENDIX

- (a) Appendix 1 - *List of all documents studied by the Task Force*
- (b) Appendix 2 - *Response - The Hamilton Harbour Stakeholders Group*
- (c) Appendix 3 - *Response - Leander Boat Club*
- (d) Appendix 4 - *Response - Royal Botanical Gardens*
- (e) Appendix 5 - *Response - The Hamilton Harbour Commissioners*
- (f) Appendix 6 - *Letter dated March 3, 1938 from A. J. Polson, City Solicitor*
- (g) Appendix 7 - *Map of the Hamilton Harbour*
- (h) Appendix 8 - *The Hamilton Harbour Commissioners' Act, Statutes of Canada 1912, Chapter 98, as amended.*
- (i) Appendix 9 - *Minutes of a special meeting of Hamilton City Council held with the Hamilton Harbour Commissioners on Thursday, August 25, 1988 and approved by City Council on Tuesday, November 8, 1988.*

APPENDIX 1

List of All Documents studied by the Task Force

Address

1. Address given to the First Place Hamilton Men's Fellowship Club
-Hamilton Harbour
-Alderman Brian Hinkley - 1987 April 30

Books

2. Excerpts - Their Town - 1979.

Court Cases

3. Jurisdiction Action - Hamilton Harbour Commissioners v. Corporation of City of Hamilton.
 - (a) Stated Case from the Ontario Municipal Board to the Ontario Divisional Court Respecting City of Hamilton Restricted Area By-Law 72-169 (1974).
 - (b) Statement of Agreed Facts in Action No. 2423/75 Commenced by by the Hamilton Harbour Commissioners in the Supreme Court of Ontario (1975).
 - (c) Judgement of Justice Griffiths of the Ontario High Court in the Action (1976 November 29) [reported in 1 M.P.L.R. 133].
 - (d) Judgement of Justice of Appeal Houlden of the Ontario Court of Appeal (1978 June 6) [reported in 6 M.P.L.R. 183].
4. Accounting Action - Corporation of the City of Hamilton v. Hamilton Harbour Commissioners and Kenneth Ronald Elliott, Supreme Court of Ontario, Action No. 4349/76.
 - (a) Judgement of Justice Walsh, on Consent (1980 October 1).
 - (b) Order of Justice Steele (1983 June 30)
5. Assessment Action - City of Hamilton v. Hamilton Harbour Commissioners and Regional Assessment Commissioner, Supreme Court of Ontario, Action 7666/76, Judgment of Justice Henry (1984, October 22) [reported in 28 M.P.L.R. 1].

Deeds

6. 1948 Deed of Hamilton Harbour Bed from the City of Hamilton to the Hamilton Harbour Commissioners.

Minutes of City Meetings

7. City of Hamilton, Council Meetings (1948 March 30)
8. City of Hamilton, Harbour Committee Minutes:
 - (a) 1972 April 4
 - (b) 1972 September 7
 - (c) 1972 September 28
9. City of Hamilton, Harbour Committee Minutes.
 - meetings held from 1974 February 15 to 1980 March 6.
10. City of Hamilton, Special Harbour Committee Minutes.
 - meetings held from 1982 February 9 to its dissolve on 1987 March 12.

Reports

11. Report of the Special Committee of City Council established to examine issues and available information with respect to the Harbour and make policy recommendations with a view of developing a clearly stated policy (1972 June).
12. Legal Foundations for the Uses of Hamilton Harbour
 - Mark Sproule-Jones, Copps Professor, McMaster University
 - Occasional Report No. 2, 1985 April.
13. An Historical Profile of Hamilton and its Harbour
 - Mark Sproule-Jones, Copps Professor, McMaster University
 - Occasional Report No. 3, 1986 September.

14. Pleasure Boating and Hamilton Harbour
 - Mark Sproule-Jones, Copps Professor, McMaster University
 - Occasional Report No. 4, 1986 October
15. Commercial Shipping and Hamilton Harbour
 - Mark Sproule-Jones, Copps Professor, McMaster University
 - Occasional Report No. 5, 1988 April
16. Implementation of the Remedial Action Plans for Hamilton Harbour
 - Mark Sproule-Jones, Copps Professor, McMaster University
and Chairman, Implementation Committee, 1988 March
17. The Halton-Wentworth Waterfront Study
 - prepared for the Waterfront Co-Ordinating and Technical
Committees by Acre Consulting Services Limited and Project
Planning Associates Limited, 1974 June

Resolutions of City Council

18. City of Hamilton, Council Resolution Respecting Hamilton Harbour
(1972 February 29)

Statutes -- Canada

19. The Toronto Harbour Commissioners' Act, 1911, Statutes of Canada
1911, chapter 26, as amended, and related Acts.
20. The Hamilton Harbour Commissioners' Act, Statutes of Canada
1912, chapter 98, as amended.
21. Ontario Harbours Agreement Act, Statutes of Canada 1963
chapter 39.

22. Canada Ports Corporation Act, Revised Statutes of Canada 1985, chapter C-9, as amended (formerly, the National Harbours Board Act).
23. Harbour Commissions Act, Revised Statutes of Canada 1985, chapter H-1, as amended.
24. Navigable Waters Protection Act, Revised Statutes of Canada 1985, chapter N-22, as amended.
25. Public Harbours and Port Facilities Act, Revised Statutes of Canada 1985, chapter P-29, as amended (formerly, the Government Harbours and Piers Act).

Statutes -- Ontario

26. The Royal Botanical Gardens Act, 1941, Statutes of Ontario 1941, chapter 75 and related Acts.
27. The Ontario Harbours Agreement Act, 1962-63, Statutes of Ontario 1963, chapter 39.

Submissions

28. Office of the City Attorney, San Francisco, Port of San Francisco: Legislation and Agreement (1968 June 27).
29. Office of the Attorney General, Department of Transportation, Maryland Port Administration, Maryland Port Authority: Legislation (1988 June 28).
30. Staff Attorney, Port of Seattle, Port of Seattle: Legislation (1988 June 27).

Miscellaneous

31. Hamilton Harbour: Dilemma or Opportunity
- Alderman Brian Hinkley
32. Executive Summary prepared by Mr. Ian Binnie, Special Legal Counsel, and presented at a Meeting of the City of Hamilton Planning and Development Committee on 1988 June 8.
33. Letter dated 1972 January 11 from City Solicitor K. A. Rouff to Members of Council Respecting Hamilton Harbour

May 12, 1988

Mr. E. A. Simpson
City Clerk
The Corporation of the City of Hamilton
City Hall
Hamilton, Ontario
L8N 3T4

RECEIVED

JUN 7 1988

CITY CLERKS

Dear Mr. Simpson:

Re: Community Task Force on The Hamilton Harbour Commission

Thank you for your letter dated April 12, 1988 regarding the above referenced Task Force.

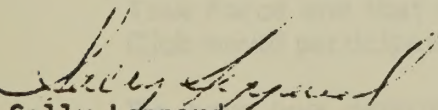
On April 27, 1988 the Hamilton Harbour Stakeholders group met and discussed your request. I have been requested to advise you on their behalf that since each one of the groups listed (with the exception of North End Information Services) is represented on the stakeholders group their views, both individually and collectively would be adequately represented. In addition, an invitation was extended to other stakeholders to contact you should they wish to participate.

Since the Hamilton stakeholders are currently developing a Remedial Action Plan Implementation Strategy, it has been suggested that Dr. Mark Sproule-Jones, Chair of the Stakeholders' Implementation Sub-Committee, share his approach with the Task Force, perhaps in September or October, once public input has been obtained.

Please do not hesitate to forward summaries of your Task Force's discussions to my attention and I will circulate them to stakeholders for their interest.

Thank you for your interest.

Yours sincerely,



Sally Leppard

c.c. S. Llewellyn
R. Stewart
M. Sproule-Jones

SL:jf

Environmental Management Strategists

720 Bathurst Street, Unit 403
Toronto, Ontario M5S 2R4
(416) 536-9161

JUN 8 1988

LEANDERPhone 527-7377**CLUB**THE BAY AT BAY STREET.O. Box 35 Hamilton Ontario

June 8, 1988

Corporation of the City of Hamilton
 City Hall
 71 Main Street West
 Hamilton, Ontario
 L8N 1K1

Attention: Susan K. Reeder
 Secretary
 Task Force to Review Mandate and
 Structure of Hamilton Harbour Commission

Dear Ms. Reeder:

Thank you for your letter of June 3 last with materials enclosed.

On behalf of Leander Boat Club I wish to take this opportunity to clarify in writing our position with respect to the participation in the deliberations of the Task Force.

As regards membership status, the Leander Boat Club, up to the date of this letter, has neither accepted nor officially declined the invitation to be a member of the Task Force. When I first received the materials by way of invitation to join the Task Force, I had a number of concerns about the wording of the resolution appointing the Task Force and the purported mandate of the Task Force. As the Executive had not had an opportunity to consider whether participation would be appropriate, I did not respond in any fashion. Subsequently I was contacted by telephone and I indicated to the person to whom I spoke over the telephone that I had some concern about the nature of the inquiry being conducted by the Task Force and that no decision had been made as to whether or not Leander Boat Club would participate.

We have now determined that while the deliberations of the Task Force will no doubt be of interest to us, the Leander Boat Club does not wish to sit as a voting member on the Task Force.

The Leander Boat Club has, in the past, received generous and timely assistance from both the City of Hamilton and the Hamilton Harbour Commissioners. The Hamilton Harbour Commissioners are our landlords and they have been very helpful and understanding in that role. The Harbour Commissioners have provided us with financial assistance for the purchase of equipment and the improvement

of the property. They have provided materials and expert assistance for the installation of new docking facilities and they have been generally supportive throughout the history of the Club. The City of Hamilton has likewise provided financial assistance. The City has traditionally supported our athletes by way of municipal awards and over the past four years, we have operated a successful Recreational Rowing Program in conjunction with the Recreation Department of the City of Hamilton.

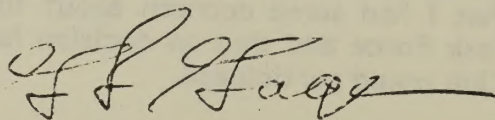
It is our observation that the specific terms of reference of the Task Force are likely to produce further conflict and disputation as between the City Council and the Harbour Commissioners. Indeed our concern in this regard seems to be confirmed by the response of the Harbour Commissioners to the invitation to participate in the Task Force. We do not feel that it would be appropriate for our Club to take on the role of participant in the dispute.

I think it is unfortunate that the City Council chose to draft the resolution for this Task Force in the manner in which it did. In the first place, from a legal point of view, I seriously doubt that the municipal council has the authority or legislative jurisdiction to review the mandate and structure of a body created by Federal legislation. Secondly, it seems to me that the very wording of the resolution is provocative in nature and was bound to produce an adverse reaction from the Harbour Commissioners.

There is no doubt in my mind that the community would benefit if there were a more co-ordinated approach to planning for the future use and enjoyment of the Harbour. At present, we cannot even get consistency as to use of the Harbour within the municipal government. In this regard, I am referring to the clear conflict between the objectives of the Waterfront Park Committee and the proposal of the Regional Planning and Economical Development Committee of the Region to pave the west end of the Harbour and send industrial traffic through the heart of the proposed waterfront recreational area.

I expect that if a Task Force had been appointed to develop a co-ordinated and consistent planning process for the use of the Hamilton Harbour, the Harbour Commissioners would have been much more likely to participate. Certainly our Club would have been more amenable to participation in such a Task Force.

Yours very truly



GEORGE S. GAGE
Rowing Captain

GSG:KJR



RECEIVED

MAY - 9 1988

May 3, 1988

CITY CLERKS

Mr. E.A. Simpson,
City Clerk,
The Corporation of the City of Hamilton,
City Hall,
HAMILTON, Ontario,
L8N 3T4

Dear Mr Simpson:

The officers of the Board of the Royal Botanical Gardens have asked me to reply to your letter of April 12th, inviting Dr. Peter Rice to submit a representative to join the Harbour Commission Reviewing Task Force.

As stated in our letter to Alderman Hinkley (enclosed) of 28th July 1987, Royal Botanical Gardens finds itself in a conflict of interest situation. Thus while being very ready to help in providing any factual material available, it is still held that RBG should not be directly a part of the task force, per se.

Sincerely,

A.P. Paterson,
DIRECTOR.



July 28, 1987

Mr. Brian Hinkley
Executive Alderman, Ward 3
City Council,
Hamilton, Ontario
L8N 3T4

Dear Mr. Hinkley:

Re: Hamilton Harbour Commission Mandate

Thank you for your letter of July 15th to Mr. Paterson regarding your invitation to us to join a study team to review the above matter. I have discussed the issue with Mr. Paterson before he left on vacation and he asked me to respond.

Royal Botanical Gardens believes that it must decline your invitation on the basis of conflict-of-interest. Since RBG owns waterlots in the Harbour, we would be in a difficult position to discuss the matter objectively. I have sought a legal opinion, and he concurs with this decision.

However, RBG subscribes to the view that there must be a mechanism to accommodate the growing body of various interests in future uses of the Harbour. In fact, RBG is one of the Stakeholders, developing a Remedial Action Plan for the Hamilton Harbour, as required by the province and the country through I.J.C.'s Water Quality Agreement between Canada and the U.S. We would, therefore, be pleased to provide your study team with background information, as required.

Sincerely,

A handwritten signature in cursive script that reads "Peter F. Rice".

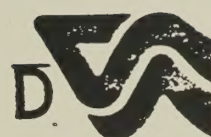
Peter F. Rice,
Assistant Director - Conservation

PFR:nm

cc: A. Paterson
L. Simser

605 James St. N.
Hamilton, Ontario, Canada
L8L 1K1

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To
Te



The Hamilton
Harbour
Commissioners

APR 25 1988

CITY CLERKS

April 22, 1988

Mr. E.A. Simpson,
City Clerk,
Corporation of the
City of Hamilton
City Hall
71 Main Street West
Hamilton, Ontario
L8N 3T4

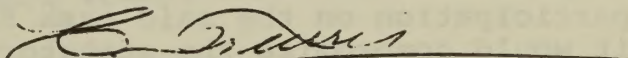
Dear Mr. Simpson,

Thank you for sending along to our Chairman, John Agro a copy of a council resolution respecting the formation of a Task Force to review the mandate and structure of the Hamilton Harbour Commissioners and inviting the Harbour Commissioners to appoint a representative to the Task Force.

The Commissioners, after reviewing what is proposed in the council's resolution, do not wish to sit on the Task Force and have asked that I let you have a copy of their resolution declining participation which I have attached.

Yours very truly,

THE HAMILTON HARBOUR COMMISSIONERS


C.G. FURRY,

SECRETARY

CGF:ds

**RESOLUTION
OF
THE HAMILTON HARBOUR COMMISSIONERS**

Upon motion duly made, seconded
and unanimously carried, it
was resolved,

WHEREAS the City of Hamilton has requested participation by the Harbour Commissioners on a task force to be established for the purpose of reviewing the mandate and structure of the Hamilton Harbour Commissioners so as to determine if the Harbour Commissioners are best suited for the future control and operation of the Harbour of Hamilton and,

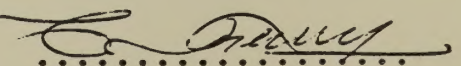
WHEREAS the Harbour of Hamilton is an international seaport in the Federal Government jurisdiction and part of the National Ports and Transportation System of Canada and; the Hamilton Harbour Commissioners are accountable to the Government of Canada for the administration and management thereof and,

WHEREAS the intent and aims of the said task force conflict with the interests of the Hamilton Harbour Commissioners which interests are set out in the Hamilton Harbour Commissioners Act 1912 c.98 and have been confirmed by the Supreme Court of Ontario and the Ontario Court of Appeal.

BE IT THEREFORE RESOLVED:

THAT in view of the foregoing circumstances The Hamilton Harbour Commissioners hereby declines participation on the said task force as by so doing it would compromise the statutory responsibilities conferred upon the Commissioners by the Parliament of Canada under the Constitution to manage and govern the affairs of Hamilton Harbour.

Certified a true and
correct copy of a
resolution of The
Hamilton Harbour
Commissioners.


.....
SECRETARY

*Have J.F.B.
Bylaw 53
now*

March 3rd,
Nineteen Thirty-eight.

Dear Sir:

Your memo of the 1st Instant is before me enclosing By-law No. 53 of the Hamilton Harbour Commissioners which is not executed. This has been forwarded to the City Clerk pursuant to Sub-section 2 of Section 20 of the Harbour Act, copy of which sub-section is enclosed.

valid The purpose of this section is that the City Council may know that the Harbour Commissioners are doing and although they have not the power of veto they would of course have the right to object to the Commissioners or to the Governor-in-Council who has to confirm the by-law before it will be made ~~false~~ or effective. Otherwise it would be quite within the power of the Harbour Commissioners to impose tolls to be paid upon vessels coming into the harbour or upon goods landed from or shipped on board vessels as they may think fit. The authority for this provision is in Section 20 of the Act which I am also enclosing.

I am returning the by-law and the letter from J. F. Berry to your Board.

Yours truly,

A.J. Polson,
City Solicitor.

H. L. Barr, Esq.,
Sec. Board of Control.

AJP:SM
MG
ENCS .

REC'D
SOLICITOR'S DEPT.

MAR 5 1938

Ans'd

HAMILTON HARBOUR

LAKE
ONTARIO

LEGEND

[illegible]

The Hamilton Harbour Commissioners



2 GEORGE V.

CHAP. 98.

An Act respecting the Harbour of Hamilton.

[Assented to 1st April, 1912.]

WHEREAS a petition has been presented praying that Preamble.
it be enacted as hereinafter set forth, and it is expedient
to grant the prayer of the said petition: Therefore His
Majesty, by and with the advice and consent of the Senate
and House of Commons of Canada, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as *The Hamilton Harbour Commissioners' Act.* Short title.

INCORPORATION.

2. The Commissioners appointed in accordance with Corporation
this Act are incorporated under the name of "The Hamilton constituted.
Harbour Commissioners," hereinafter called "the Corpor-
ation."

INTERPRETATION.

3. In this Act, unless the context otherwise requires,— Definitions.
- (a) "commissioner" means a member of the corporation; Commis-
sioner.
 - (b) "by-law" means any by-law, rule, order or regulation By-law.
made by the Corporation under the authority of
this Act;
 - (c) "vessel" includes every kind of ship, boat, barge, Vessel.
dredge, elevator, scow, or floating craft propelled
by steam, or otherwise;
 - (d) "goods" means any movables other than vessels; Goods.
 - (e) "rates" means any rate, toll, or duty whatsoever Rates.
imposed by this Act.

Harbour
limits
defined.

4. For the purposes of this Act, the harbour of Hamilton shall be deemed to include all the waters of Burlington Bay and what is known as Cootes Paradise, together with all the inlets thereof (excepting however, Burlington Channel), and also all water-front property, water lots, piers, docks, shores and beaches in and along the said bay and waters.

Land marks.

5. The Corporation may erect land marks to indicate the said limits of the harbour of Hamilton, which land marks shall be held to determine, *prima facie*, the said limits.

COMPOSITION OF CORPORATION.

Commis-
sioners.

6. The Corporation shall consist of three commissioners, one of whom shall be appointed by the council of the city of Hamilton, and two by the Governor in Council.

Appointment
by city, how
made.

2. The commissioner to be appointed by the city of Hamilton shall be nominated in the council, and an affirmative vote of at least two-thirds of the members of the council present and voting shall be necessary for his election.

Term of
office.

3. The commissioner so appointed shall hold office for three years, subject to removal, and until his successor is appointed, and shall be eligible for re-appointment.

City council-
ors ineli-
gible.

4. No member of the council shall be eligible to be a commissioner.

Resigna-
tions.

7. A commissioner appointed by the Governor in Council may resign his office by notifying, in writing, the Governor in Council of such resignation, and a commissioner appointed by the council of the city of Hamilton by notifying in writing the said council of such resignation.

Filling of
vacancies.

8. Whenever a vacancy occurs in the office of the commissioner appointed by the council of the city of Hamilton, whether such vacancy occurs by expiration of the term of office, or otherwise, the council shall, within thirty days, appoint his successor, and, in default of such appointment being made within the said period, the Governor in Council may appoint a person to fill such vacancy, and the person so appointed shall hold office in all respects as the commissioner in whose place he is appointed would have held it.

Oath of
office.

9. Before any commissioner enters upon the execution of his duties as commissioner, he shall take and subscribe an oath that he will truly and impartially to the best of his skill and understanding execute the powers vested in him as a member of the Corporation, which oath shall be filed on record in the office of the Corporation.

Chairman
and quorum.

10. The Corporation shall elect its own chairman, and two commissioners shall be a quorum for the transaction of all business within the jurisdiction of the Corporation.

OFFICERS AND EMPLOYEES.

11. The Corporation may appoint a harbour-master and such other officers, assistants, engineers, clerks and servants as it deems necessary to carry out the objects and provisions of this Act, and may allow them such compensation or salaries as it deems fitting, and require and take from them such security for the due and faithful performance of their respective duties as it deems necessary.

Officers, etc.

Salaries.

Security.

GENERAL POWERS.

12. The Corporation shall, for the purposes of and as provided in this Act, have jurisdiction within the limits of the harbour of Hamilton, but nothing herein shall be deemed to give the Corporation jurisdiction or control respecting private property or rights within the said limits.

Territorial limits of jurisdiction.

Private rights not affected.

13. The Corporation may institute and defend all suits, actions and proceedings in any court of justice in respect of the said property and the land comprised within the harbour.

Suits and actions.

14. The Corporation may hold, take, develop and administer on behalf of the city of Hamilton, subject to such terms and conditions as may, at the time the control thereof is transferred to the Corporation, be agreed upon with the council of the said city, the dock property and water lots owned by the city of Hamilton in the harbour as defined by this Act, and all other property which may be placed under the jurisdiction of the Corporation.

Power to hold and administer certain property for city.

2. The Corporation may acquire, expropriate, hold, sell, lease and otherwise dispose of such real estate, building or other property as it deems necessary or desirable for the development, improvement, maintenance and protection of the harbour as in this Act defined, or for the management, development and control of such property, or for any of the other purposes of this Act, and re-invest the proceeds arising therefrom in its discretion.

Property required for harbour.

3. Notwithstanding anything in this Act, the Corporation shall not, without the previous consent of the Governor in Council, sell, alienate, mortgage, or otherwise dispose of any land acquired by it from the Government of Canada.

Alienation of land restricted.

15. The Corporation may regulate and control the use and development of all land and property on the water front within the limits of the harbour of Hamilton, and all docks, wharfs, buildings and equipment erected or used in connection therewith, and for these purposes may pass by-laws as hereinafter provided.

Use and development of water front.

Docks,
buildings
and
appliances.

2. The Corporation may construct and maintain docks, channels, warehouses, cranes or other buildings, equipment and appliances, for use in the carrying on of harbour or transportation business, and may sell, lease or operate the same.

Construction
and opera-
tion of
railways.

3. The Corporation may, subject to such provisions of *The Railway Act* as are applicable to the exercise of the powers granted by this subsection,—

- (a) construct, acquire by purchase, lease or otherwise, maintain and operate railways within the boundaries of the port and harbour of Hamilton as defined by this Act;
- (b) enter into agreements with any railway company for the maintenance, by such company, of such railways and the operation thereof by any motive power, and so as at all times to afford all other railway companies whose lines reach the harbour the same facilities for traffic as those enjoyed by such company;
- (c) make arrangements with railway companies and navigation companies for facilitating traffic to, from and in the harbour, or for making connection between such companies' lines or vessels and those of the Corporation;

but nothing in this subsection shall be deemed to constitute the Corporation a railway company.

Plant and
machinery.

4. The Corporation may own and operate, by any motive power, all kinds of appliances, plant and machinery for the purpose of increasing the usefulness of the harbour or facilitating the traffic therein.

R.S., c. 115
to apply to
works.

5. Any work undertaken by the Corporation affecting the use of any navigable waters shall be subject to the provisions of *The Navigable Waters' Protection Act*.

Profits of
operation,
if any, to
belong to
city.

16. After providing for the cost of management of all the property which the Corporation owns, controls, or manages under the preceding sections, and after providing for the cost of works or improvements authorized by the Corporation and for the performance of the other duties imposed upon the Corporation, and for capital charges and interest upon money borrowed by the Corporation for improvements, and for all other liabilities of the Corporation, and for a sinking fund to pay off any indebtedness incurred by the Corporation, any surplus profits shall be the property of the city of Hamilton, and shall be paid over by the Corporation to the city treasurer.

Books, etc.,
to be open
to inspec-
tion by
city.

17. All books, documents and papers having reference to the management and development of any property under the control of the Corporation shall at all times be open for inspection by the audit department of the city of Hamilton;

and the Corporation shall report annually all its proceedings in connection therewith to the council of the said city.

Annual
report.

EXPROPRIATION OF LANDS.

18. Whenever the Corporation desires to acquire any lands for any of the purposes of this Act, should the Corporation be unable to agree with the owner of the lands which it is authorized to purchase, as to the price to be paid therefor, then the Corporation may acquire such lands without the consent of the owner, and the provisions of *The Railway Act* relating to taking land by railway companies shall, *mutatis mutandis*, be applicable to the acquisition of such lands by the Corporation, but no proceedings for the expropriation of lands shall be commenced until the consent of the Governor in Council is first obtained.

Expropria-
tion of lands.

R.S., c. 37
to apply.

BORROWING POWERS.

19. For the purpose of defraying the expenses of constructing, extending and improving the wharfs, structures and other accommodations in the harbour of Hamilton in such manner as the Corporation deems best calculated to facilitate trade and increase the convenience and utility of the said harbour, the Corporation may borrow money in Canada or elsewhere, and at such rates of interest as it finds expedient, and may for the said purposes issue debentures for sums not less than one hundred dollars or twenty pounds sterling, payable in not more than forty years, which debentures may be secured upon the real property vested in or controlled by the Corporation, subject to the several exceptions contained in section 14 of this Act.

Borrowing
powers.

Debentures.

Term.

Security.

Guarantee.

2. The principal and interest of the sums of money which may be borrowed under this section shall be a charge on the revenue arising from the rental and income out of the management of all property under the jurisdiction of the Corporation and from the rates and penalties imposed by or under this Act for, or on account of, the said harbour; and other lawful charges upon the said revenue shall be as follows:—

Charge upon
revenue.

Other charges
on revenue.

- (a) The payment of all expenses incurred in the collection of the same, and other necessary charges;
- (b) The defraying the expenses of keeping the harbour clean and of keeping the wharfs and other works therein in a thorough state of repair;
- (c) The payment of interest due on all sums of money borrowed under this Act;
- (d) Providing a sinking fund for paying off the principal of all sums borrowed by or assumed by the Corporation;

Collection.

Repairs.

Interest.

Sinking fund.

Operating,
etc.

- (e) The cost of operating docks and wharfs, and otherwise carrying out the objects of this Act.

BY-LAWS.

By-laws.

20. The Corporation may make by-laws, not contrary to law or to the provisions of this Act, for the following purposes:—

Navigation.

- (a) To regulate and control navigation and all works and operations within the harbour, and to appoint constables and other officials to enforce the same, or to enforce the provisions of any statutes or marine regulations relating to the harbour;

Building
operations
and other
actions
affecting
harbour.

- (b) To regulate, control or prohibit any building operations within or upon the harbour, excavations, removal or deposit of material, or any other action which would affect in any way the docks, wharfs, or channels of the harbour and water front or the bed of the harbour or the lands adjacent thereto;

Construction,
etc., of works
on docks, etc.

- (c) To construct, regulate, operate and maintain railways, elevators, pipes, conduits, or other works or appliances upon the docks, wharfs or channels or any part thereof; and to control and regulate or prohibit the erection of towers or poles, or the stringing of wires or use of any machinery which might affect property or business owned, controlled or operated by the Corporation;

Poles, wires,
machinery,
etc.

Encroach-
ments.

- (d) To prevent injuries to or encroachments upon any of the channels, harbours, wharfs or waters generally within the limits of the harbour;

Explosives.

- (e) To regulate and control the landing and shipping of explosives or inflammable substance;

Order,
prevention
of theft.

- (f) To maintain order and regularity and prevent theft and depredations;

Rules, tolls
and penal-
ties.

- (g) For the imposition and collection of all rates, tolls and penalties imposed by law or under any by-law under the authority of this Act;

Control of
boats, etc.

- (h) For regulating and controlling the operation and use of all canoes, sailing boats, row boats, motor boats and other kind of craft within the limits of the area over which the Corporation has jurisdiction;

Penalties for
infringing
Act or
by-law.

- (i) To impose penalties upon persons infringing any of the provisions of this Act or the by-laws of the Corporation; such penalties not to exceed fifty dollars or thirty days' imprisonment, and in default of payment of such pecuniary penalty and the costs of conviction, the period of imprisonment to be fixed by by-law not to exceed sixty days, nor to continue after such payment is made;

Government
of harbour.

- (j) For the government of all parties using the harbour and of all vessels coming into or using the same

and by such by-laws to impose tolls to be paid upon such vessels and upon goods landed from or shipped on board of the same as they think fit, according to the use which may be made of such harbour and works aforesaid;

- (k) For the doing of everything necessary for the effectual execution of the duties and powers vested in the Corporation. Execution of duties and powers.

2. No by-law shall have force or effect until confirmed by the Governor in Council and published in *The Canada Gazette*, and every such by-law shall, at least ten days before it is submitted to the Governor in Council, be served upon the city clerk of Hamilton. Confirmation of by-laws.

3. A copy of any by-law certified by the secretary under the seal of the Corporation shall be admitted as full and sufficient evidence of such by-law in all courts in Canada. Copies, when evidence.

HARBOUR RATES.

21. The valuation of goods on which *ad valorem* rates are imposed shall be made according to the provisions of *The Customs Act*, as far as applicable; and the said provisions shall, for the purposes of such valuation, be held to form part of this Act as if actually embodied herein. Valuation of goods. R.S., c. 48 to apply.

22. The rates upon the cargoes of all vessels shall be paid by the master or person in charge of the vessel, saving to him such recourse as he may have by law against any other person for the recovery of the sums so paid; but the Corporation may demand and recover the said rates from the owners or consignees or agents or shippers of such cargoes if it sees fit to do so. Recovery of rates.

23. The Corporation may commute any rates authorized by this Act to be levied, on such terms and conditions and for such sums of money as the Corporation deems expedient. Commutation of rates.

SUMMARY PROCEEDINGS.

24. The Corporation may, in the following cases, seize and detain any vessel at any place within the limits of the province of Ontario:— Seizure of vessels.

- (a) Whenever any sum is due in respect of a vessel for rates or for commutation of rates, and is unpaid;
- (b) Whenever the master, owner or person in charge of the vessel, has infringed any provision of this Act, or any by-law in force under this Act, and has thereby rendered himself liable to a penalty.

Seizure of
goods.

25. The Corporation may seize and detain any goods in the following cases:—

- (a) Whenever any sum is due for rates in respect of such goods, and is unpaid;
- (b) Whenever any provision of this Act, or any by-law in force under this Act, has been infringed in respect of such goods, and a penalty has been incurred thereby.

Seizure and
detention to
be at owner's
risk.

26. Every lawful seizure and detention made under this Act shall be at the risk, cost and charges of the owner of the vessel or goods seized, until all the sums due, and penalties incurred, together with all proper and reasonable costs and charges incurred in the seizure and detention, and the costs of any conviction obtained for the infringement of any provision of this Act, or of any by-law in force under this Act, have been paid in full.

Duration.

May be
made with
or without
suits.

2. The seizure and detention may take place either at the commencement of any suit, action or proceeding for the recovery of any sums of money due, penalties or damages or pending such suit, action or proceeding, or as incident thereto, or without the institution of any action or proceeding whatsoever.

Order for
seizure.

3. The seizure and detention may be effected upon the order of—

- (a) any judge;
- (b) any magistrate having the power of two justices of the peace;
- (c) the collector of Customs at the port of Hamilton.

Application
for order.

4. The said order may be made on the application of the Corporation, or its authorized agent, or its solicitor, and may be executed by any constable, bailiff or other person whom the Corporation entrusts with the execution thereof; and the said constable, bailiff or other person, may take all necessary means and demand all necessary aid to enable him to execute the said order.

Execution
of order.

Aid.

RESTRICTION.

Pecuniary
transactions
forbidden.

27. The Corporation shall not have any transactions of any pecuniary nature, either in buying or selling, with any members thereof, directly or indirectly.

OATHS.

Administra-
tion of oaths.

28. Whenever any person is required by or in pursuance of this Act to take any oath, any commissioner, the secretary of the Corporation, the harbour master of Hamilton, or any justice of the peace, may administer such oath.

ACCOUNTING FOR MONEYS.

29. The Corporation shall keep separate accounts of ^{Accounts.} all moneys borrowed, received and expended by it under the authority of this Act; and shall account therefor annually to ^{Annual reports to} the Governor in Council in such manner and form as he ^{Governor in Council.} may direct.

LIMITATION OF SUMMARY PROCEEDINGS.

30. In the case of any violation of this Act, or of any ^{Limitation of} by-law in force under this Act, no complaint or information ^{actions.} shall be made or laid after two years from the time that the matter of complaint or information arose.

OTTAWA: Printed by CHARLES HENRY PARMELEE, Law Printer to
the King's most Excellent Majesty.

15 GEORGE VI.

CHAP. 17.

An Act respecting The Hamilton Harbour Commissioners.

[Assented to 31st May, 1951.]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Hamilton Harbour Commissioners Act, 1951.* Short title.

2. The Hamilton Harbour Commissioners, hereinafter called "the Corporation", in addition to all other powers vested in them, may conduct, on the lands of the Corporation in the City of Hamilton and in the Township of Saltfleet, amusements, recreation grounds, playgrounds and public bathing beaches, or arrange with others to conduct the same, and may charge or receive compensation for the use of and admission to such grounds and beaches and enjoyment of such amusements, and may permit others to conduct and operate such amusements, recreation grounds, playgrounds and public bathing beaches, and to make charges therefor either wholly for themselves or partly for themselves and partly for the Corporation, or wholly for the Corporation, as the Corporation may think proper. Powers to conduct amusements, recreation grounds, etc., on their lands.

3. (1) The Corporation may expend money for erecting, building, developing and maintaining such amusements, recreation grounds, playgrounds and public bathing beaches and the purchase of buildings, equipment and apparatus therefor, borrow money for defraying the expenses thereof and make by-laws for the control and regulation of such amusements, grounds and beaches. Powers to spend, borrow and make by-laws.

(2) The provisions of *The Hamilton Harbour Commissioners' Act*, chapter ninety-eight of the statutes of 1912, relating to the jurisdiction of the Corporation and the exercise of powers thereby extend and apply, *mutatis mutandis*, to the powers granted to the Corporation under this Act. Provisions of c. 98 of 1912 to apply.

6 ELIZABETH II.

CHAP. 16

An Act respecting The Hamilton Harbour Commissioners.

[Assented to 20th December, 1957.]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. This Act may be cited as *The Hamilton Harbour Commissioners Act, 1957*. Short title.

2. The Minister of Finance, upon application made to him by The Hamilton Harbour Commissioners (hereinafter called the "Corporation") and approved by the Minister of Transport, may, with the approval of the Governor in Council, make loans to the Corporation out of the Consolidated Revenue Fund of amounts not exceeding in the aggregate four million dollars as may be required by the Corporation for the construction, renewal or repair of transit sheds, terminals, slips and other harbour facilities on any or all of the lands included within the limits of the harbour of Hamilton. Loans to Corporation.

3. The Corporation shall furnish to the Minister of Transport plans, specifications and estimates of expenditures for the facilities mentioned in section 2, and no loan shall be made to the Corporation under this Act until such plans, specifications and estimates have been approved by the Minister of Transport. Approval of plans, etc.

4. The Corporation shall, upon any loan being made to it under this Act, issue and deposit with the Minister of Finance debentures of the Corporation equal in par value to the amount of the loan so made, and the debentures shall be of such amounts and repayable on such terms and shall bear such rates of interest as the Governor in Council determines. Debentures.

Repayment
of loans.

5. The principal amount of and the interest on loans made to the Corporation under this Act shall be repayable by the Corporation out of its tolls, rates, penalties and other sources of revenue, and shall rank as a first charge thereon subject to the repayment of debentures issued by the Corporation prior to the coming into force of this Act.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

Amend the Financial Administration Act in relation to Crown corporations and to amend other Acts in consequence thereof. S.E. 1984, c. 31.

C. 31

Financial Administration

32-33 ELIZ. II

Sanction

Sanction

155. Where a director, chairman or chief executive officer of a Crown corporation has wilfully contravened this Part or the regulations, or has wilfully caused the corporation to contravene this Part or the regulations, the Governor in Council may suspend him, with or without remuneration, for such period as the Governor in Council deems appropriate."

155. Le gouverneur en conseil peut suspendre, avec ou sans traitement, pour la période qu'il juge appropriée, l'administrateur, le président ou le premier dirigeant d'une société d'État qui contrevient volontairement aux dispositions de la présente partie ou des règlements ou qui, volontairement, fait en sorte que la société y contrevienne."

12. Part XII of the said Act is renumbered as Part XIII and sections 95 to 100 thereof are renumbered as sections 156 to 161, respectively.

12. La même loi est modifiée par substitution, au numéro de partie XII et aux numéros d'article 95 à 100, des numéros XIII et 156 à 161.

13. Schedules B, C and D to the said Act are repealed and Schedules B and C as set out in Schedule I to this Act are substituted therefor.

13. Les annexes B, C et D de la même loi sont abrogées et remplacées par les annexes B et C qui figurent à l'annexe I de la présente loi.

CONSEQUENTIAL AMENDMENTS

MODIFICATIONS CORRÉLATIVES

14. The portions of Acts set out in Schedule II are repealed or amended in the manner and to the extent indicated in that Schedule.

14. Les parties des lois mentionnées à l'annexe II sont abrogées ou modifiées de la façon qui y est indiquée.

TRANSITIONAL PROVISIONS

DISPOSITIONS TRANSITOIRES

15. In this section and sections 16 to 23, (a) a reference to Part XII of the said Act, to Schedule C to the said Act or to any provision of the said Act is a reference to that Part, Schedule or provision as enacted by this Act; and (b) words and expressions have the same meaning as in Part XII of the said Act, except that "parent Crown corporation" does not include a corporation referred to in subsection 96(1) or (2) of the said Act.

15. Au présent article et aux articles 16 à 23 :

- a) toute mention de la partie XII, de l'annexe C ou d'une disposition de la même loi vaut mention de cette partie, annexe ou disposition telle qu'elle est édictée par la présente loi;
- b) les termes s'entendent au sens de la partie XII de la même loi; toutefois, l'expression «société d'État mère» ne vise pas une société visée aux paragraphes 96(1) ou (2) de la même loi.

16. Each parent Crown corporation that has any wholly-owned subsidiaries shall, within thirty days after the coming into force of this Act, notify the appropriate Minister and the President of the Treasury Board of the names of those subsidiaries.

16. Les sociétés d'État mères qui ont des filiales à cent pour cent en font parvenir la liste au ministre de tutelle et au président du Conseil du trésor dans les trente jours suivant l'entrée en vigueur de la présente loi.

17. Each parent Crown corporation shall, within thirty days after the coming into force of this Act, send a copy of every by-law of the corporation in effect on the coming into

17. Les sociétés d'État mères font parvenir au ministre de tutelle et au président du Conseil du trésor un exemplaire de leurs règlements administratifs en cours de validité

SCHEDULE II (Continued)

Item	Column I Act Affected	Column II Amendment
29.	Government Companies Operation Act R.S., c. G-7	Section 3 is repealed and the following substituted therefor: Agent of Her Majesty "3. Every Company is for all its purposes an agent of Her Majesty in right of Canada."
30.	The Hamilton Harbour Commissioners' Act 1912, c. 98	(1) Section 8 is renumbered as subsection 8(1). (2) Section 8 is amended by adding thereto the following subsection: Presumption "(2) A commissioner appointed by the Governor in Council pursuant to subsection (1) is deemed, for the purposes of Part XII of the <i>Financial Administration Act</i> , to not have been appointed by the Governor in Council."
31.	Harbour Commissions Act R.S., c. H-1	Section 5 is amended by adding thereto, immediately after subsection (4) thereof, the following subsection: Presumption "(4.1) A member of a Commission appointed by the Governor in Council pursuant to subsection (4) is deemed, for the purposes of Part XII of the <i>Financial Administration Act</i> , not to have been appointed by the Governor in Council."
32.	Income Tax Act R.S., 1952, c. 148	Wherever in section 27 and subsection 124(3) reference is made to "a corporation specified in Schedule D to the <i>Financial Administration Act</i> ", there shall in every case be substituted the words "a prescribed federal Crown corporation".
33.	Investment Companies Act 1970-71-72, c. 33	Subsection 29(3) is repealed and the following substituted therefor: Information not to be included in capital budgets "(3) The capital budget of the Corporation submitted pursuant to section 131 of the <i>Financial Administration Act</i> shall not include information relating to anticipated

APPENDIX 9

Thursday, 1988 August 25
12:00 o'clock noon
Room 233, City Hall

A special meeting of Hamilton City Council was held.

There were present: Alderman D. Christopherson, Acting Chairman
Alderman R. Wheeler
Alderman T. Cooke
Alderman P. Cowell
Alderman D. Ross
Alderman J. Gallagher
Alderman V. Agro
Alderman G. Copps
Alderman M. Kiss
Alderman B. Hinkley

Regrets: Mayor Robert M. Morrow
Alderman W. McCulloch
Alderman J. Smith
Alderman T. Murray
Alderman H. Merling
Alderman D. Agostino
Alderman P. Valeriano

Also present: Mr. John Agro, Chairman, The Hamilton Harbour Commissioners
Mr. Peter Lush, Harbour Commissioner
Mr. Clint Flurry, Secretary, The Hamilton Harbour Commissioners
Mr. Bob Hennessey, Port Director, Hamilton Harbour Commissioners
Mr. Duncan Beattie, City's Appointee to The Hamilton Harbour Commissioners
Mr. D. Carson, Mayor's Office
Mr. E. Kowalski, Director of Community Development
Mr. B. Loreto, City Solicitor's Office
Mr. K. Christenson, Acting Waterfront Project Manager
Mr. B. Warry, Harbour Task Force
Mr. J. Nolan, Harbour Task Force
Mrs. G. Simmons, Harbour Task Force
Mr. Mark Sproule-Jones, McMaster University
Mr. E. A. Simpson, City Clerk
Mrs. Susan K. Reeder, Acting Secretary

Alderman D. Christopherson introduced the meeting and thanked all those present for their attendance. He introduced Mr. John Agro, the Chairman of the Hamilton Harbour Commissioners.

Introductions.

Mr. Agro spoke to the Special Meeting of City Council and expressed his thanks for appointing Mr. Duncan Beattie as the City's Appointee to the Hamilton Harbour Commissioners. Mr. Agro indicated that there was some confusion initially at whether Mr. Beattie was the Appointee or the Representative of Hamilton City Council. Mr. Agro then introduced Mr. Peter Lush, a Harbour Commissioner. Mr. Lush gave a slide presentation on the Hamilton Harbour and the work of the Commissioners.

Slide Presentation
by Harbour
Commissioners.

Packages of information were distributed to Members of City Council containing the Seventy-Fifth Annual Report of the Hamilton Harbour Commissioners, a brochure entitled "Canada's Heartland Harbour", a publication entitled "The Great Lakes/Seaways System" published by the International Association of Great Lakes Ports and a copy of the Presentation and Visuals being presented at this special meeting of Hamilton City Council.

Information
distributed.

Mr. Lush outlined the following facts with respect to the Hamilton Harbour:

Facts with respect
to Hamilton Harbour.

- (a) Hamilton ranks fifth in Canada in terms of total tonnage for domestic cargo. For International Cargo it is ninth in Canada.
- (b) In 1987, a total of 63 million tonnes of Canadian Cargo was shipped through the Saint Lawrence Seaway. Hamilton handled a total of over 18 percent of that cargo.

- (c) Finished goods such as steel, machinery and heavy equipment are the backbone of Ontario's Industrial Economy. In 1987 the Saint Lawrence Seaway System shipped 1.17 million tonnes of this type of overseas general cargo to or from Canada. The Port of Hamilton handled 679 thousand tonnes of this cargo, or 57.6 percent of the total. By comparison Toronto handles 20.4 percent of the total.
- (d) In ranking of International Great Lakes Ports shipping general cargo in 1987, Hamilton was in third place, slightly behind Chicago and Detroit.

Mr. Lush indicated that the Commissioners own eight major shipping piers handling 1.7 million tons of product in 1987 on 320 acres, employing 1,170 people directly and many thousands indirectly. He added that the overseas cargo operation of Pier 8 and Pier 10 in 1987 generated a payroll of 3.1 million dollars and responsible for direct purchases for some 2.3 million in goods and services. Mr. Lush asked that those in attendance consider the spin-off of these expenditures to the Hamilton Community.

On a national scale, Federal duties collected on overseas cargo moving through the Port of Hamilton amounted to 7.75 million dollars in 1987.

Mr. Lush asked that those in attendance consider the significant contribution made by the Hamilton Port to the City of Hamilton's economy. He added that it is the Commissioner's responsibility to protect that economic base, while at the same time "striving to play our part in improving water quality, recreational activities, improving the environment, the quality of life surrounding the harbour".

Mr. Lush spoke on surplus revenues and indicated the following:

"the responsibility of the Commission is to make sure that the port facilities keep up with the economic demands here in Hamilton as well as the anticipated shipping needs of this Region; the other cities which rely on the port. Consequently, excess revenue is continually being ploughed back in to improved port facilities. We have at present a number of major corporations negotiating to develop shipping facilities here in Hamilton".

Mr. Lush spoke on the assets in dollar terms of the Harbour Commissioners and indicated that in 1914 when the City of Hamilton asked the Federal Government to set up the Commission that the fixed assets of the Commissioners was \$215 400. Mr. Lush indicated that expenditures on port improvements through to 1988 has totalled about 52 million dollars and continued to add that market value of these facilities is estimated to be well in excess of 200 million dollars. Mr. Lush indicated that taxes paid to the City in 1987 by the Commission on behalf of its broad base of tenants totals 1.5 million dollars.

Mr. Lush indicated that the Commissioners have reserve funds to cover some future capital improvements that will be needed along with substantial monies from the Federal Government to achieve needed on-going port development programmes.

Mr. Lush indicated that the Commissioners are "preoccupied with the operation of a shipping port" and all of the work that goes along with that. He added that the Commissioners do recognize that they have a responsibility for doing their part in "improving the quality of life around the perimeter of the Bay and to improve the environment".

Mr. Lush indicated the following facts with respect to this aspect:

- (a) The Port has built and operates over 400 berths and moorings for recreational boats. This is 35 percent of the total available in western Lake Ontario.
- (b) The Port of Hamilton founded, in 1970, the first oil spill clean up team in Canada to deal with accidental oil spills on Hamilton Harbour.

Facts respecting
the Commissioners
contribution to
the Community.

- (c) Since 1975, the Hamilton Harbour Commissioners Sailing School has educated over 15,500 students, not only in the basics of sailing, but also on the importance of boating and water safety. He added that the Community Sailing School now teaches over 3,000 students per year and since it was founded the Commissioners have invested over \$700 000 in this programme.

Mr. Lush also indicated that the Commissioners have already donated Pier 4 Park to the City of Hamilton, located beside Leander Boat Club and close to the City's planned Waterfront Park. Mr. Lush also indicated and it was stated in the presentation document that "there is no question we can do more and intend to.. working with the City where ever possible, mutually to achieve collective goals".

Mr. Lush spoke on the future development plans of the Harbour Commissioners.

He indicated that strategic planning is an integral part of port management.

He added that the demand for recreational boating berths has continued to outrun the supply and as a result the Commissioners are currently reviewing a feasibility study and plans for substantially increasing recreational boating facilities, docks, etc. Mr. Lush also added that a new public launching ramp is proposed on a site adjacent to the ship canal to better service ship and boating public.

Mr. Lush outlined the plans for the various piers as follows:

(a) Piers 8 and 10 -

These piers are in the review process for re-ramping for more efficient use of these piers.

(b) Pier 11 -

Planned expansion to handle liquid bulk products.

(c) Pier 15 -

Lands purchased by J. I. Case. The Commissioners plan to redevelop the property for commercial shipping purposes, probably in the dry bulk cargo area.

(d) East Port Piers 25, 26 and 27 -

Plans for development of this area are not expected to be completed until sometime after the year 2000.

Mr. Lush added that a substantial portion of the bed of the harbour is under the Commissioner's direct control for shipping and navigation. He added that along the north shore of the Bay, the Commissioners regularly provide waterlot leases at a nominal fee for recreational use.

Mr. Lush indicated that he wants to see recreational aspects of the harbour be compatible with shipping and navigation and the following statement was included in the written presentation and stated at the meeting:

"We support the concept of the City's Waterfront Park, based on the premise that development take place on those lands in waterlots presently owned by the City. We will work in every way possible to continue to achieve compatibility as has historical been the fact; recreational and other public uses functioning effectively, compatibly, with the commercial shipping aspects of the harbour as a port city".

Mr. Lush spoke briefly on the Windemere Basin and the clean-up plans. He added that the clean-up will take approximately two years and will include shoreline landscaping.

Future
development plans
of the Harbour
Commissioners.

Mr. Lush indicated that the Commissioners are present to promote further understanding to the City of Hamilton on the activities at the Hamilton Harbour as well as to convey the importance of the Hamilton Port to the City of Hamilton and the role that it plays on a national basis.

Mr. Lush spoke on his own experiences as a boy at the harbour and spoke on the recreational uses of the harbour, the eyesores which are disappearing, the recreational boating which is increasing. He concluded by indicating that he looks forward to working with the City on mutual goals and future collaborations.

A question and answer period then ensued.

Alderman Hinkley expressed thanks to the Commissioners for attending. He indicated that the people of Hamilton want part of the harbour for their use. Alderman Hinkley then asked the Commissioners how the public participates in harbour business and asked if it is similar to how the City of Hamilton deals with their conducting of business.

The Commissioners indicated that the press are invited to Harbour Commissioners meetings to hear all issues except those buying property. It was indicated that the City's Appointee has the right to report to City Council on all issues, except those matters of an in-camera nature which the Appointee is sworn to confidentiality in an oath of office. It was added that the Commissioners rely on the media to relay information to the public.

Alderman Hinkley asked if there are public participation programmes, i.e. public meetings in order for the public to provide input on issues being considered by the Commissioners.

The response to this question was no. The Commissioners indicated that items dealing with land acquisition are not made public since release of this information would increase the purchase price.

Alderman Hinkley asked if feasibility studies are undertaken by the Harbour Commissioners to examine the financial aspects of projects undertaken by the Harbour Commissioners.

The Commissioners indicated that this does not occur and added that you can't market what has not been built. They added that the private sector won't invest until they see dock facilities and that docks are therefore built on speculation. They added that they can test on existing business but not speculative business.

Alderman Hinkley asked if studies undertaken by the Harbour Commissioners examine environmental impact of any proposed development.

The Commissioners advised that environmental impact is considered when the development is ensuing and that the Commissioners are obligated to comply with all environmental regulations.

Alderman Hinkley asked if the Federal Environmental Assessment Branch has public meetings to allow for public input when they are considering proposed developments.

The Commissioners advised that they were unsure if this occurs.

Alderman Hinkley asked if the feasibility studies undertaken by the Harbour Commissioners would be released to City Council and the Public.

The Commissioners indicated that these studies would not be released as exposure of these studies would damage the proposed projects.

Alderman Ross asked for some clarification on the financial statements for the year ended 1987 December 31 which had been distributed to members of City Council. Some discussion then ensued on the dollar amounts referred to in the statements.

Alderman Ross asked the Commissioners if the "excess of revenue over expenses for the year" referred to in the financial statements should be coming back to the City of Hamilton.

Chairman Agro of the Harbour Commissioners quoted the Terms of Settlement arrived at through Court deliberations and indicated that the Commissioners are to advise the City of Hamilton on issues related to "City's concerns". He added that the interest of the harbour come first and that the excess of revenues are used for harbour development.

Alderman Ross questioned the amount of 9 million dollars referred to in the "reserve for future harbour improvements" and asked if these represented surplus funds.

Mr. Peter Lush, Hamilton Harbour Commissioner indicated that there are no surplus funds.

Alderman Ross asked the Commissioners what their future plans are for these funds and the Commissioners indicated that they would not comment on this as it was a confidential matter.

Alderman Copps asked the Commissioners what their plans for the west end waterlots were, specifically waterlots 1, 2 and 3.

Alderman Copps.

Chairman Agro indicated that they have no plans at this time for those waterlots.

Alderman Copps asked the Commissioners what fill will be used for the proposed land fill project of approximately 125 acres.

Mr. Hennessey, Port Director answered and advised that Pier 27 will be filled with dredging soil contents over the next ten to twelve years and that it will then be capped and used for shipping. It is anticipated that this fill will comprise approximately 125 acres.

Alderman Copps questioned the plans for Pier 11 and the proposed expansion to handle liquid bulk products. She asked what environmental protections would be used for that use.

Mr. Hennessey, Port Director responded by indicating that since late 1970 there has been a decrease in the volume of liquid cargo due to international importing of oil. He added that some of this business is coming back but that it is more of a nitrogen solution business. He added that there is no business for hazardous chemicals and if there was operations would be subject to environmental controls.

Alderman Copps asked for clarification from the Commissioners on the term appointee of the City of Hamilton to the Harbour Commissioners rather than representative of the City to the Harbour Commissioners.

Chairman Agro indicated that in 1979 there was a court case with respect to a dredging scandal. The City's appointee was part of the charged group and if this appointee had been a representative, he would have been linked with the City and thus the City of Hamilton would have been co-responsible for his actions.

The City Clerk concurred that Mr. Beattie is an appointee of the City of Hamilton to the Hamilton Harbour Commissioners.

Alderman Gallagher

Alderman Gallagher questioned the Harbour Commissioners on why they have not appointed someone to sit on the Waterfront Sub-Committee.

Chairman Agro indicated that they had wanted to be involved originally to assist but due to problems arising from planning conflicts with the City of Hamilton they have backed away from participating in the Sub-Committee.

Alderman Gallagher asked whether they will not appoint a representative of the Harbour Commissioners to sit on the Waterfront Sub-Committee.

Chairman Agro indicated that he does not want to be put on a spot on this issue and will have to reconsider this matter. He added that they are interested in having a park at the harbour.

Alderman Gallagher asked when the Harbour Commissioners would make a decision on appointing a representative to the Waterfront Sub-Committee.

Chairman Agro indicated that perhaps in two years time. He further added that when funding is in place from the higher levels of government that the Harbour Commissioners will be involved at that time.

Alderman Wheeler

Alderman Wheeler spoke to the meeting and gave a history of the harbour as he recalls during his growing up years. He spoke of the time when the Bay was acceptable for swimming.

Alderman Wheeler indicated that in 1941 he moved to the Beach Strip. He indicated that at that time this strip was owned by people who owned property along that area. He added that the Highway Department bought land to build bayshore land and that land was then purchased by Stelco and Dofasco. Alderman Wheeler expressed frustrations that the people felt at having their homes so close to industrial operations.

He asked that the Harbour Commissioners think of preserving the harbour bayshore for the people's use.

Chairman Agro indicated that in 1977 Piers 1, 2 and 3 were offered to the City from the Harbour Commissioners in exchange for the City of Hamilton to allow the Commissioners to work in the east end of the harbour for shipping and navigation without being interfered with. He added that this offer was turned down. He further added that the Harbour Commissioners had proposed to build an arena at the harbour and that this had also been rejected. Chairman Agro then expressed frustration and indicated that there would be no more offers from the Harbour Commissioners.

Mr. Lush, a Harbour Commissioner spoke and indicated that in response to Alderman Wheeler's request for the Commissioners to consider allowing the bayshore to be used for people's use that he would consider this request.

Alderman Kiss

Alderman Kiss spoke to the meeting and asked about the jurisdiction over Cootes Paradise.

Chairman Agro indicated that the Royal Botanical Gardens is responsible for running that area and that this responsibility has been granted to them by the Harbour Commissioners for in perpetuity.

Alderman Copps

Alderman Copps spoke to the meeting and asked that the Harbour Commissioners not judge the present Council on the history of the actions and occurrences that have happened with past Councils.

Alderman Christopherson, Chairman of this special meeting then thanked all those who had attended, the Harbour Commissioners, the members of the Harbour Task Force and others for attending this meeting.

This special meeting of City Council then adjourned.

There being no further business, the meeting then adjourned.

Adjournment.

Taken as read and approved,

ALDERMAN D. CHRISTOPHERSON
ACTING CHAIRMAN
HAMILTON CITY COUNCIL

Susan K. Reeder
Acting Secretary
1988 August 25

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